



# ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು  
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೪ Part - IV	ಬೆಂಗಳೂರು, ಶನಿವಾರ, ೧೮, ಮೇ, ೨೦೨೪(ವೈಶಾಖ, ೨೮, ಶಕವರ್ಷ, ೧೯೪೬) BENGALURU, SATURDAY, 18, MAY, 2024(VAISHAKHA, 28, SHAKAVARSHA, 1946)	ಸಂ. ೨೪೦ No. 240
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## Personnel and Administrative Reforms Secretariat (Elections) Notification

No: DPAR 06 CHUTHAA 2024, Bengaluru, Dated:18.05.2024.

**ELECTION COMMISSION OF INDIA**  
Nirvachan Sadan, Ashoka Road, New Delhi - 110001

No: 82/KT-LA/07 & 08/2023

Dated: 25th April 2024  
5 Vaisakha, 1946 (Saka)

### NOTIFICATION

No:82/KT-LA/07 & 08/2023 - In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment / Orders of the High Court of Karnataka dated 14.03.2024 in the Election Petition No. 07 & 08 of 2023.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE RAVI V HOSMANI

ELECTION PETITION NO. 7 OF 2023 (-)

BETWEEN:

1. MR. UMESHA G.B.  
S/O BHADRAGIRIGOWDA  
AGED ABOUT 36 YEARS,  
R/AT NO.67-A, GODURU,  
ATHIGUPPE POST,KANAKAPURA TALUK  
RAMANAGARA - 562 112.
2. MR. MAHADEV S.,  
S/O CHINNAMMA,  
AGED ABOUT 35 YEARS,  
R/AT KAMALAPURA, ATTKUPPE,  
ATTIKUPPE, RAMANAGARA - 562 112.
3. MR. MAHADEVA, S/O K.R. MAYANNAGOWDA,  
AGED ABOUT 45 YEARS,  
R/AT BOMMACHANA HALLI,  
NEAR ANGANVADI BOMMACHANA  
SUGGANAHALLI, RAMANAGARA - 562 128.
4. MR. C. SHIVALINGAMURTHY,  
S/O CHIKKANNA @ SANNAPPA,  
AGED ABOUT 58 YEARS,  
R/AT NO.58 KAGGALAHALLI,  
HAGALAHALLI, RAMANAGARA - 562 128.
5. MR. SRINIVAS L.S.,S/O SWAMY,  
AGED ABOUT 30 YEARS,  
R/AT NO.11, LINGEGOWDANADODDI,  
HAGALAHALLI, RAMANAGARA-562 128.
6. MR. T.S. SIDDARAJU S/O SIDDEGOWDA,  
AGED ABOUT 55 YEARS,  
R/AT NO.39, HOSATHOKASANDRA,  
THOKASANDRA, RAMANAGARA-562 121.

...PETITIONERS

(BY SRI SANDESH T.B., ADVOCATE)

AND:

MR. H.A. IQBAL HUSSAIN,  
S/O LATE ABDUL BASHEER SAB,  
AGED ABOUT 62 YEARS,  
R/AT NO.86, HUKUNDA VILLAGE,  
UYYAMBALLI HOBLI, KANAKAPURA TALUK,  
RAMANAGARA - 562 119. ... RESPONDENT

(BY SRI C.S. PATIL AND SRI RAVINDRANATH K., ADVOCATES)

THIS ELECTION PETITION IS PRESENTED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, BY SRI UMESHA G.B. AND 5 OTHERS PETITIONERS-ELECTORS ALONGWITH HIS COUNSELS SRI NISHANTH .A.V, SRI KARTHIK C., SRI CLIVE JOHNS QUADROS AND SRI SANMATHI KUMAR (ADVOCATES FOR PETITIONER) BEFORE THE REGISTRAR (JUDICIAL) ON 26.06.2023 [THE PROCEEDINGS OF REGISTRAR (JUDICIAL) IS AT PAGE NO.1 OF THE PETITION], CHALLENGING THE ELECTION OF RESPONDENT MR. IQBAL HUSSAIN FROM 183, RAMANAGARA ASSEMBLY CONSTITUENCY, 2023 TO THE KARNATAKA LEGISLATIVE ASSEMBLY 2023 AND THE PETITIONER PRAYS THIS HON'BLE COURT TO (A) CALL FOR RECORDS.(B) SET ASIDE THE ELECTION OF THE RESPONDENT TO THE 16<sup>TH</sup> KARNATAKA LEGISLATIVE ASSEMBLY FROM NO.183-RAMANAGARA ASSEMBLY CONSTITUENCY, KARNATAKA, LEGISLATIVE ASSEMBLY AND ETC.

THIS PETITION, COMING ON FOR ORDERS ON IA, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed seeking for following reliefs:

- (A) *Call for records;*
- (B) *Set aside the Election of the Respondent to the 16<sup>th</sup> Karnataka Legislative Assembly From no.183 – Ramanagara Assembly Constituency, Karnataka Legislative Assembly.*

2. In said petition, respondent (hereinafter referred to as 'returned candidate') has filed I.A.no.2/2023 under Order VII Rule 11 (a) to (d) of Code of Civil Procedure, 1908 ('CPC' for

short) for rejection of petition as devoid of cause of action, failure to comply with mandatory requirements in terms of Section 81 and untenable in terms of Section 100 of Representation of People Act, 1951 ('ROPA' for short).

3. Learned counsel for respondent submitted that he had contested election for being elected 'Member of Legislative Assembly of Karnataka' from Ramanagara Constituency in election held on 10.05.2023 and was declared on 13.05.2023 as returned candidate. It was submitted, on ground that above petition was frivolous apart from being non-compliant with mandatory requirements of ROPA. Therefore, respondent had filed I.A.no.2/2023 for rejection of petition.

4. It was submitted that Section 83 of ROPA prescribes contents of election petition filed under Section 80 of ROPA as follows:

*"83. Contents of petition.—*

*(1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties*

*alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.*

*(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

5. As per Section 83 (1) (a), petition is required to disclose concise statement of material facts on which petitioner relies, while clause (b) requires it to set forth full particulars of any corrupt practice that petitioner alleges including names of persons involved as well as date and place of commission of each such corrupt practice. Proviso to sub-section (1) mandates petitioner filing an affidavit in prescribed form in support of allegation of corrupt practice with particulars thereof. It was submitted, above requirements were mandatory and failure to comply would render petition untenable and liable for rejection.

6. Learned counsel further submitted that Section 100 of ROPA provided limited grounds on which election of a candidate could be declared void. It was submitted, in case of

corrupt practice, Section 100 (1) (b) provided that election could be declared void only on finding that such corrupt practice was committed with consent of returned candidate or his election agent, while sub-section (2) provided that if such corrupt practice was committed contrary to orders or without consent of candidate or his election agent or that such candidate had taken reasonable care for preventing commission of corrupt practices, election could not be declared void.

7. It was submitted that corrupt practice for purposes of ROPA was defined in Section 123 of ROPA as follows:

*"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—*

*(1) "Bribery", that is to say—*

*(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—*

*(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or*

*(b) an elector to vote or refrain from voting at an election, or as a reward to—*

*(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or*

*(ii) an elector for having voted or refrained from voting;*

*(B)"*

*Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications*

*or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78.*

*(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:"*

8. It was submitted, perusal of present petition filed by common voters did not disclose a clear case of corrupt practice committed by respondent or his election agent with his consent as defined by Section 123 to substantiate grounds for declaring election void provided in Section 100 and therefore, petition was liable to be rejected at threshold. It was submitted, in order to make out case of commission of corrupt practice, petitioners were required not only to state material facts on which they relied, but also disclose full particulars of corrupt practice with names, date and place.

9. It was submitted petitioners - common voters had sought to substantiate allegation of corrupt practice against respondent by stating that corrupt practice was as per his instructions, by referring to a meeting alleged to be held at Block Congress Office, but they have not disclosed source of information, whether personal or person from whom they had

got information as 'source of information' itself would be a 'material particular' as per requirements of Section 83 read with Sections 100 and 123 of ROPA. It was submitted even particulars of persons who had attended such meeting etc., are also not pleaded which would be a fatal flaw.

10. It was submitted, though copy of guarantee card was enclosed to petition, same would not have evidentiary value for present purposes in absence of particulars about date of issue, person who issued it, validity and whether it was issued either by or at behest of respondent. Admittedly, no complaint has been filed against respondent or his election agent either before Chief Election Officer or jurisdictional police station.

11. It was further submitted, election petition was also defective on ground that it was not accompanied by affidavit in form prescribed under Rule 94A of the Conduct of Election Rules, 1961 (hereinafter referred to as 'Rules'). It was submitted, requirement of filing affidavit in form 25 was required as per Rule 94A. It was submitted, form of affidavit required deponent to disclose source of information, whether personal knowledge or otherwise. Since, affidavit failed to



clarify source of information, affidavit filed did not confirm requirement, which had to be viewed as material and fatal flaw. Consequently election petition was liable to be dismissed.

12. It was further submitted that Section 127-A of ROPA requires name and address of printers and publisher thereof on every election pamphlet or poster. It was submitted, copy of guarantee card sought to be relied upon by petitioners does not comply with said requirement. Mere presence of photograph of respondent and party symbol would not substantiate that it was published and distributed either with consent or as per instructions of respondent. Moreover, there is no action initiated against anyone for violation of Section 127-A of ROPA. Therefore, said document did not have evidentiary value. Consequently, when entire allegation of corrupt practice alleged against respondent in election petition is based on guarantee card, it would be futile to permit election petition to proceed to be put to trial. Hence, election petition was liable to be dismissed.

13. It was further submitted unlike assertion in petition, copy of only one gift card is produced. Non-production of gift

cards issued to all petitioners would be fatal as gift cards is fundamental basis of their petition.

14. In support of his submissions, learned counsel sought to rely on observations of Hon'ble Supreme Court in case of Samant N. Balkrishna v. George Fernandez, reported in (1969) 3 SCC 238, in following paragraphs:

*"25. Pausing here, we may view a little more closely the provisions bearing upon corrupt practices in Section 100. There are many kinds of corrupt practices. They are defined in Section 123 of the Act and we shall come to them later. But the corrupt practices are viewed separately according as to who commits them. The first class consists of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established, avoid the election without any further condition being fulfilled. Then there is the corrupt practice committed by an agent other than an election agent. Here an additional fact has to be proved that the result of the election was materially affected. We may attempt to put the same matter in easily understandable language. The petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent, in which case he need not establish what the result of the election would have been without the corrupt practice. The expression "Any other person" in this part will include an agent other than an election agent. This is clear from a special provision later in the section about an agent other than an election agent. The law then is this: If the petitioner does not prove a corrupt practice by the candidate or his election agent or another person with the consent of the returned candidate or his election agent but relies on a corrupt agent, he must additionally prove how the corrupt practice affected the result of the poll. Unless he proves the consent to the commission of the corrupt practice on the part of the candidate or his election agent he must face this additional burden. The definition of agent in this context is to be taken from Section 123 (Explanation) where it is provided that an agent "includes an election agent, a polling agent and any person who is held to have*

*acted as an agent in connection with the election with the consent of the candidate." In this explanation the mention of "an election agent" would appear to be unnecessary because an election agent is the alter ego of the candidate in the scheme of the Act and his acts are the acts of the candidate, consent or no consent on the part of the candidate.*

*29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of*

*the section because then the efficiency of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although the penalty of dismissal is taken away. Sub-section (5) of that section provides:*

*"(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."*

*The power of amendment is given in respect of particulars but there is a prohibition against an amendment "which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition." One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contract in the language of the two parts. The first part is enabling and the second part creates a positive bar. Therefore, if a*

*corrupt practice is not alleged, the particulars cannot be supplied. There is, however, a difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the scheme of election law there are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate is quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action.*

*30. Since a single corrupt practice committed by the candidate, by his election agent or by another person with the consent of the candidate or his election agent is fatal to the election, the case must be specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice cannot be supplied later on. The bar of the latter part of the fifth sub-section to Section 86 then operates. In the petition as originally filed the agency of Jagadguru Shankaracharya, Mr Madhu Limaye and the Maratha (or Mr. Atrey) was the basis of the charge and the candidate Mr. Fernandez was left out. No allegation was personally made against him. The only allegations against him personally were contained in para 2-G. There it was said that Mr. Fernandez had made certain speeches to the effect that Mr. Patil was against the Muslims and Christians. No evidence was led and they were not even referred to at the hearing before us. The next reference in 2-J is to statements of Mr. Fernandez and published by the Maratha. These were specified and only three such statements were included. Since the gist of the election offence is the publication of false statements, the charge is brought home to the candidate through the publication by the Maratha. It is to be remembered that even the allegation that in doing so the Maratha acted as the agent of Mr. Fernandez, itself came by way of an amendment which we allowed as it completed the cause of action and is permissible. The bar of Section 86(5) (latter part) does not apply to it and under Order 6 Rule 17 of the Code of Civil Procedure which is applicable as far as may be, such an amendment can be made. Similarly the allegations that*

*such statements were false or were believed to be false or were not believed to be true by the Maratha (i.e., Mr. Atrey) and that they were calculated to prejudice Mr. Patil's chances and did so, were allowed by us to be added as completing the cause of action relating to a corrupt practice already alleged. But we declined to allow to stand the amendments which had the effect of introducing new corrupt practices relating to the candidate himself which had not been earlier pleaded. This kind of amendment is prohibited under the law when the amendment is sought after the period of limitation.*

*37. From our examination of all the cases that were cited before us we are satisfied that an election petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated. It is obvious that merely repeating the words of the statute does not amount to a proper statement of facts and the section requires that material facts of corrupt practices must be stated. If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later, but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition.*

*45. Mr Jethamalani contended in further support that there was a clear similarity in the statements and utterances of Mr Fernandez and Mr Atrey. He inferred a high probability of concert between them. In this connection he referred in particular to the speech of Mr Fernandez at Shivaji Park and the conduct of Shanbhag, one of his workers, in following up what Mr Fernandez had said. We shall refer to this last part later, on which a considerable part of the time of the Court was spent, although we had ruled out the amendment with regard to the speech at Shivaji Park. Mr Jethamalani referred to the following cases among others in support of his contention that consent in such circumstances may be assumed: Nani Gopal Swami v. Abdul Hamid Chaudhary [1959 Ass 200]. Adams v. Hon. F.F. Leveson Gower [1 O'Malley and Hardcastle 218]; Christie v. Grieve and W.F. Spencer [1 O'Malley and Hardcastle 251] ; John Blundell v. Charles Harrison [3 O'Malley and Hardcastle 148] . There is no doubt that consent need not be directly proved and a consistent course of conduct in the canvass of the candidate may raise a presumption of consent. But there are cases and cases. Even if all this is accepted we are of opinion that consent cannot be inferred. The evidence proves only that Mr Atrey was a supporter and that*

*perhaps established agency of Mr Atrey. It may be that evidence is to be found supporting the fact, that Mr Atrey acted as agent of Mr Fernandez with his consent. That however, does not trouble us because Mr Chari admitted that Mr Atrey can be treated as an agent of Mr Fernandez. It is however, a very wide jump from this to say that Mr Fernandez had consented to each publication as it came or even generally consented to the publication of items defaming the character and conduct of Mr Patil. That consent must be specific. If the matter was left entirely in the hands of Mr Atrey who acted solely as agent of Mr Fernandez, something might be said as was done in Rama Krishna case by this Court. Otherwise there must be some reasonable evidence from which an inference can be made of the meeting of the minds as to these publications or at least a tacit approval of the general conduct of the agent. If we were not to keep this distinction in mind there would be no difference between Section 100(1)(b) and 100(1)(d) insofar as an agent is concerned. We have shown above that a corrupt act per se is enough under Section 100(1)(b) while under Section 100(1)(d) the act must directly affect the result of the election insofar as the returned candidate is concerned. Section 100(1)(b) makes no mention of an agent while Section 100(1)(d) specifically does. There must be some reason why this is so. The reason is that an agent cannot make the candidate responsible unless the candidate has consented or the act of the agent has materially affected the election of the returned candidate. In the case of any person (and he may be an agent) if he does the act with the consent of the returned candidate there is no need to prove the consent of the returned candidate and there is no need to prove the effect on the election. Therefore, either Mr Jethamalani must prove that there was consent and that would mean a reasonable inference from facts that Mr Fernandez consented to the acts of Mr Atrey or he must prove that the result of the election was seriously affected. If every act of an agent must be presumed to be with the consent of the candidate there would be no room for application of the extra condition laid down by Section 100(1)(d), because whenever agency is proved either directly or circumstantially, the finding about consent under Section 100(1)(d) will have to follow. We are clearly of opinion that Mr Jethamalani's argument that Section 100(1)(b) applies can only succeed if he establishes consent on the part of Mr Fernandez.*

*47. The meeting at Shivaji Park about which we shall say something presently, was not held in Mr Fernandez's constituency. The similarity of ideas or even of words cannot be pressed into service to show consent. There*

was a stated policy of Sampurna Maharashtra Samiti which wanted to join in Maharashtra all the areas which had not so far been joined and statements in that behalf must have been made not only by Mr Atrey but by several other persons. Since Mr Atrey was not appointed as agent we cannot go by the similarity of language alone. It is also very significant that not a single speech of Mr Fernandez was relied upon and only one speech of Mr Fernandez namely, that at Shivaji Park was brought into arguments before us by an amendment which we disallowed. The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced. The "Maratha" was an independent newspaper not under the control of the Sampurna Maharashtra Samiti or the S.S.P. which was sponsoring Mr Fernandez or Mr Fernandez himself. Further we have ruled out news items which it is the function of the newspaper to publish. A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. In the present case the only attempt to prove a speech of Mr Fernandez was made in connection with the Shivaji Park meeting. Similarly the editorials state the policy of the newspaper and its comment upon the events. Many of the news items were published in other papers also. For example Free Press Journal, the Blitz and writers like Welles Hengens had also published similar statements. If they could not be regarded as agents of Mr Fernandez we do not see any reason to hold that the "Maratha" or Mr Atrey can safely be regarded as agent of Mr Fernandez when acting for the newspaper so as to prove his consent to the publication of the defamatory matter. We are therefore of opinion that consent cannot reasonably be inferred to the publications in the "Maratha". We are supported in our approach to the problem by a large body of case law to which our attention was drawn by Mr Chari. We may refer to a few cases here : Bishwanath Upadhaya v. Hardal Das [1958 Ass 97] ; Abdul Majeed v. Bhargavan (Krishnan) [AIR 1963 Ker 18] ; Rustom Satin v. Dr Sampoorananand [20 ELR 221] ; Sarla Devi Pathak v. Birendra Singh [20 ELR 275] ; Krishna Kumar v. Krishna Gopal [AIR 1964 Raj 21] ; Lalsing Kesbrising Sehvar v. Vallabhdas Shankarlal Phekdi [AIR 1967 Guj 62] ; Badri Narain Singh v. Kamdeo Prasad Singh [AIR 1951 Pat 41] and Sarat Chandra



*Rabba v. Khagendranath Math [AIR 1961 SC 334] . It is not necessary to refer to these cases in detail except to point out that the Rajasthan case dissents from the case from Assam on which Mr Jethamalani relied. The principle of law is settled that consent may be inferred from circumstantial evidence but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although the trial of an election petition is made in accordance with the Code of Civil Procedure, it has been laid down that a corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent. Since we have held that Mr. Atrey's activities must be viewed in two compartments, one connected with Mr Fernandez and the other connected with the newspaper we have to find out whether there is an irresistible inference of guilt on the part of Mr Fernandez. Some of the English cases cited by Mr Jethamalani are not a safeguard because in England a distinction is made between "illegal practices" and "corrupt practices". Cases dealing with "illegal practices" in which the candidate is held responsible for the acts of his agent are not a proper guide. It is to be noticed that making of a false statement is regarded as "corrupt practice" and not an "illegal practice" and the tests are different for a corrupt practice. In India all corrupt practices stand on the same footing. The only difference made is that when consent is proved on the part of the candidate or his election agent to the commission of corrupt practice, that itself is sufficient. When a corrupt practice is committed by an agent and there is no such consent then the petitioner must go further and prove that the result of the election insofar as the returned candidate is concerned was materially affected. In Bayley v. Edmunds, Byron and Marshall [(1894) 11 TLR 537] strongly relied upon by Mr Daphtary, the publication in the newspaper was not held to be a corrupt practice but the paragraph taken from a newspaper and printed as a leaflet was held to be a corrupt practice. That is not the case here. Mr Patil's own attitude during the election and after is significant. During the election he did not once protest that Mr Fernandez charged his workers with hooliganism. Even after the election Mr Patil did not attribute anything to Mr Fernandez. He even said that the Bombay election was conducted with propriety. Even at the filing of the election petition he did not think of Mr Fernandez but concentrated on the "Maratha".*

50. Now it may be stated that mere knowledge is not enough. Consent cannot be inferred from knowledge

*alone. Mr Jethamalani relied upon the Taunton case [1 O'Malley and Hardcastls 181 at 185] where Blackburn, J., said that one must see how much was being done for the candidate and the candidate then must take the good with the bad. There is difficulty in accepting this contention. Formerly the Indian Election Law mentioned "knowledge and connivance" but now it insists on consent. Since reference to the earlier phrase has been dropped it is reasonable to think that the law requires some concrete proof, direct or circumstantial of consent, and not merely of knowledge and connivance. It is significant that the drafters of the election petition use the phrase "knowledge and connivance" and it is reasonable to think that they consulted the old Act and moulded the case round "knowledge and connivance" and thought that was sufficient."*

15. Likewise on observations in case of V. Narayanaswamy v. C.P. Thirunavukkarasu, reported in (2000) 2 SCC 294, in following paragraphs:

*"23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the*

*election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.*

*26. Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter; if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years.*

*Reference in this connection may be made to Section 8-A [- A. Disqualification on ground of corrupt practices.—*

*(1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:*

*Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect.*

*(2) Any person who stands disqualified under Section 8-A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.”] of the Act. It was for this purpose that the proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961 (w.e.f. 20-9-1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the rules.*

27. It is contended by Mr. Bhandare that all the material facts have been stated in the election petition and that for lack of material particulars, the petition could not have been thrown out at the threshold. He said opportunity should have been given to the appellant to supply the material particulars. It is really a strange proposition to advance. Till the date of the impugned judgment, the appellant had persisted that the petition did not lack material particulars and that the verification was in accordance with the Code and the affidavit in support of the corrupt practice in the form prescribed. Admittedly, the petition lacked material particulars, the verification to the petition was not in accordance with the Code and the affidavit did not conform to the form prescribed. At the first opportunity, the respondent raised objection that the petition lacked both material facts and the material particulars and that the verification to the petition and the affidavit were not in accordance with law. This was repeated in the miscellaneous application (Original Application No. 298 of 1998). In the counter-affidavit and in the reply to the miscellaneous application, the appellant persisted in his stand and termed the objections raised by the respondent as irrelevant. It is not that the appellant did not have the opportunity to correct his mistake which he could have easily done in the rejoinder filed by him to the counter-affidavit of the respondent or even his reply to the miscellaneous application (OA No. 298 of 1998). He had every opportunity even at that stage to supply the material particulars which admittedly were lacking and also to amend the verification and to file the affidavit in the form prescribed but for reasons best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the court has jurisdiction to dismiss the petition. The High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct suo motu the furnishing of better particulars and requiring amendment of the petition for the purpose of verification and filing of proper affidavit. In a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. (See in this connection the Constitution Bench decision in *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani* [AIR 1955 SC 610: (1955) 2 SCR 428] SCR at p. 144.)

28. The grievance of the appellant is that he wanted to meet the MLAs other than the MLAs of the Congress Party to which he belonged but those MLAs were kept first in Hotel Ashoka at Pondicherry and then taken to five star hotels at Mahabalipuram. The appellant alleged that the MLAs were "kept" in Hotel Ashoka but he has not given particulars as to what he meant by the word "kept". "Kept" is certainly not "confined". What entertainment was provided to those MLAs in Hotel Ashoka, Pondicherry or in five star hotels in Mahabalipuram has also not been specified. It is not his case that he was prevented in any way from meeting any of those MLAs. It was a material fact to allege which he failed to do so. This is apart from the fact that the material particulars as to when the MLAs were taken to Hotel Ashoka and to other places, the names of the MLAs and the names of the hotels in Mahabalipuram, who took them there, who paid their bills and who brought them back are lacking. The appellant does not show as to why he could not meet all those MLAs on 2-10-1997. Apart from one independent MLA the other MLAs belonged to various other political parties like DMK, TMC, CPI, PMK and the Janata Dal. Rather it can be assumed that the MLAs voted according to their political affiliations. It has come on record that out of a total number of 29 MLAs who constituted the Legislative Assembly of Pondicherry, two belonged to AIDMK, another political party. AIDMK had taken the decision not to vote for any candidate and that is how the two MLAs of this party did not participate in the election and the total votes polled were 27. There was only one independent MLA and his casting of vote either way would not have at all affected the result of the election considering the number of votes polled by each of the candidates. It is not the case of the appellant that he was barred from meeting any of the MLAs in order to solicit their votes. There is no allegation if there is any complaint by any MLA that he was kept out of circulation by the respondent or with his consent by any other person for the purpose of not being accessible to the appellant.

29. The appellant in his petition said that C. Jayakumar, Minister and K. Kandaswamy, Deputy Speaker and K. Rajasekheran, Parliamentary Secretary to the Chief Minister, were the agents of the respondent. He then alleged that C. Jayakumar took Kandaswamy and Rajasekheran to Goa with a view to influence them to get their votes in favour of the respondent. Is it not paradoxical where one agent influences the other agent to vote in a particular way? It certainly could not be a corrupt practice. The appellant then alleged that N. Keshavan, MLA belonging to DMK and also a government whip kept independent MLA Rajaraman first in Hotel Ashoka, Pondicherry and then took him to Kovalam, Chengleput District, then to Tirupati in a government vehicle

*and then brought back to Pondicherry on 2-10-1997. It is not the case of the appellant that N. Keshavan did so with the consent of the respondent or any of his agents or otherwise. This is a material fact which the appellant failed to allege. Lastly, notification regarding appointments of Chairmen to various committees came out much later after the results were declared. It is correct that none of the nominees belonged to the Congress Party.*

*30. It will thus be seen that the election petition not only lacked the material facts, it lacked material particulars, defective verification and the affidavit filed was not in the form prescribed. Moreover, the ingredients of corrupt practices, as defined in Section 123(1)(B) and 123(2) of the Act are also lacking. It is also not the case of the appellant that any MLA whom the appellant could not meet, received any gratification, as defined, whether as a motive or a reward for voting or refraining from voting, or there was any inducement or attempt to induce any such MLA to vote or refrain from voting. Also it is not the case of the appellant that any undue influence was exercised with the free exercise of any electoral right of any MLA which right, as noted above, has been defined in clause (d) of Section 79 of the Act. There is no allegation if any particular MLA was induced to vote or not to vote in a particular way because he was entertained or otherwise. The allegation is that the appellant himself could not meet the MLAs and he believed that if he had been given a chance to meet them he would have influenced their vote in his favour and against their party of affiliations. There is no allegation that the MLAs were prevented or influenced from freely exercising their electoral right. As stated earlier the appellant did not show as to why he could not meet the MLAs on 2-10-1997 when they were available in Pondicherry. The material fact must be that the appellant was prevented from meeting the MLAs which he did not allege and as to how he was so prevented would constitute material particulars."*

16. Likewise on observations in case of Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar, reported in (2009) 9 SCC 310, in following paragraphs:

*"6. It was also incorporated in the written statement that the election petition does not set forth the material facts of the alleged corrupt practice. The respondent herein has also failed to disclose the names of the parties alleged to have committed the corrupt practice. In the election petition, the date and place of the commission of such alleged corrupt*

*practice has not been mentioned and, therefore, the election petition deserved to be dismissed as not maintainable.*

*17. The High Court has totally misdirected itself by misconstruing the ratio laid down in a catena of decisions pronounced by this Court including the law laid down in Azhar Hussain case [1986 Supp SCC 315] and H.D. Revanna case [(1999) 2 SCC 217] which if properly applied to the facts and circumstances of the present case would lead to rejection of the election petition in limine.*

*19. In the election petition the respondent has mentioned that there was scarcity of water supply in certain villages. However, the respondent has failed to mention the number of houses which face such alleged water scarcity. In the written statement, the appellant also alleged that the respondent in the election petition has also failed to mention about water availability in these villages; the respondent has further failed to mention as to since when has there been water scarcity? The appellant in the written statement further alleged that the respondent has also not mentioned as to how many houses are there in these villages; how many persons are living in each of the houses; and how many persons are voters in these villages. The respondent has also not mentioned as to how many villages have water connections; and when and where the water scarcity had been noticed in these villages. He has also not mentioned as to when this complete breakdown or insufficient water supply had occasioned to these villages nor has he mentioned the date, time, place or any other details of such breakdown and has generally failed to give the details as required under Section 83 of the Act.*

*22. Similarly, the respondent failed to give particulars regarding the bore wells whose cost as alleged amounts to Rs.6,38,557. Similarly, expenditure of Rs.12,50,000 has been alleged to have been made for the purchase of ambulances. The particulars have not been provided. It is not clear as to how the respondent has come to the figure of Rs.5,00,000 which according to him has been spent by the appellant. He did not give any particulars regarding either of the bore wells or the ambulances.*

*23. The appellant denied crossing the limit of Rs.5,00,000 as prescribed under the Act and the Rules framed thereunder. It is also alleged that the appellant did not construct any bore wells nor did he provide any ambulances to the villagers and, therefore, the question of showing the same in the election expenses did not arise at all. The appellant denied that an amount of Rs.6,38,557 and an amount of Rs.12,50,000 as alleged has been the*



*expenditure factually incurred by the appellant and denied having committed any corrupt practice. The question of the election results being materially affected does not arise at all and, therefore, the election petition is liable to be dismissed.*

*24. It was specifically argued that the election petition is liable to be dismissed because there has been non-compliance with Section 83(1) of the Act because there was no sufficiency and adequacy of pleadings in the election petition.*

*25. Section 83(1) of the Act reads as under:*

*"83. Contents of petition.—(1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."*

*27. In the impugned judgment, the High Court erroneously concluded that the election petition when read as a whole discloses that it has material facts stated and regarding which triable issues are also framed and therefore, it cannot be rejected at the preliminary stage. The High Court in the impugned judgment has discussed the decision of this Court in *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93]. According to the appellant, the High Court erroneously distinguished this case. The impugned judgment of the High Court is neither in consonance with the provisions of the Act nor according to the settled legal position as has been crystallised in a number of cases by this Court. Being aggrieved by the impugned judgment, the appellant has preferred this appeal.*

28. In this election petition, Respondent 1 has challenged the appellant's election primarily on the ground of corrupt practices, alleging that the appellant dug bore wells in the constituency and provided ambulances after the election notification was issued in order to lure the voters from the constituency or induce them to vote for the appellant.

41. This controversy is no long *res integra*. More than a century ago, in *Phillips v. Phillips* [(1878) 4 QBD 127: 48 LJQB 135 (CA)], Cotton, L.J. stated: (QBD p. 139)

"... What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

47. The question of material facts in the election petition was comprehensively dealt with by this Court in *Azhar Hussain* case, 1986 Supp SCC 315. The Court observed that it is not disputed that the Code of Civil Procedure applies to the trial of an election petition by virtue of Section 87 of the Representation of the People Act, 1951. Section 87(1) and Section 87(2) of the Act apply to the election petition.

49. In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) of the Code. These provisions are set out as under:

"16. Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.

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11. Rejection of plaint.—The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;"

50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

51. This Court in *Samant N. Balkrishna* case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

52. In *V.Narayanaswamy v. C.P. Thirunavukkarasu*, (2000) 2 SCC 294, this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666] this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under: (SCC p. 677, para 11)

"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition and no amendment of the

*pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment."*

53. In *Udhav Singh case* (1977) 1 SCC 511 this Court observed as under: (SCC pp. 522-23, para 41)

*"41. Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."*

*(emphasis in original)*

54. In *H.D. Revanna case* (1999) 2 SCC 217, the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In *Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi*, (2005) 5 SCC 46, this Court observed thus: (SCC p. 51, para 14)

*"14. Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing*

*the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Code of Civil Procedure, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11, Order 7 of the Code."*

*55. In Harkirat Singh v. Amrinder Singh [(2005) 13 SCC 511] this Court again reiterated the distinction between "material facts" and "material particulars" and observed as under: (SCC p. 527, paras 51-52)*

*"51. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*52. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."*

*56. In Sudarsha Avasthi v. Shiv Pal Singh [(2008) 7 SCC 604] this Court observed as under: (SCC p. 612, para 20)*

*"20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose."*

*57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The*

*election petition must contain a concise statement of "material facts" on which the petitioner relies.*

*58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)*

*48. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."*

*59. In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (the respondent herein) is bound to substantiate before he can succeed on that charge. It is also well settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.*

*60. According to the appellant, in the election petition, there was no averment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election petitioner (the respondent herein) and the*

*election petition is liable to be summarily dismissed on that ground.*

*61. The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.*

*62. When we apply the aforementioned test to the election petition in this case, then the conclusion becomes irresistible that the election petition lacks the materials facts. The election petition read as a whole does not disclose any cause of action."*

17. And following observations in case of Kanimozhi Karunanidhi v. A. Santhana Kumar, reported in 2023 SCC OnLine SC 573:

*"16. In the instant case, the respondent-election petitioner has challenged the election of the appellant on the ground that the result of the election, insofar as it concerned the appellant, was materially affected by non-compliance with Article 324 of the Constitution and by non-compliance with Rule-4A of the said Rules read with Section 33 of the Act. It may be noted that Section 33 of the Act pertains to the presentation of nomination paper and the requirements for a valid nomination. Section 36 pertains to the scrutiny of nominations by the Returning Officer.*

*Sub-section (2) thereof empowers the Returning Officer, either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned therein. One of the grounds to reject the nomination is, when there has been failure to comply with any of the provisions of Section 33. Sub-section(4) of Section 36 states that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.*

*17. Part-II of the Conduct of Election Rules, 1961 deals with the General Provisions. Rule-4 and Rule-4A which pertain to the submission of nomination paper and the Form of affidavit to be filed at the time of delivering nomination paper read as under:—*

*"4. Nomination paper- Every nomination paper presented under sub-section (i) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:*

*Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.*

*4A. Form of affidavit to be filed at the time of delivering nomination paper- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."*

*Legal position:*

*18. The scheme of the Constitutional and statutory provisions contained in the R.P. Act in relation to the nature of the right to elect, the right to be elected and the right to dispute an election have been explained and interpreted by various Constitutional Benches since 1952. To cite a few are N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, in Jagan Nath v. Jaswant Singh, in Bhikji Keshao Joshi v. Brijlal Nandlal Biyani, in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore etc.*

*19. What has been gleaned from the said authorities may be summed up by stating that a right to elect, though fundamental it is to democracy, is neither a fundamental right nor a common law right. It is purely a statutory right. Similarly, right to be elected and the right to dispute an election are also statutory rights. Since they are statutory creations, they are subject to statutory limitations. An Election petition is not an action at common law, nor in equity. It is a special jurisdiction to be exercised in accordance with the statute creating it. The concept familiar to common law and equity must remain strangers to election law unless statutorily embodied. Thus, the entire election process commencing from the issuance from the notification calling upon a constituency to elect a member or members right upto the final resolution of the dispute, concerning the election is regulated by the Representation of People Act, 1951. The said R.P. Act therefore has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election dispute.*



20. In a very interesting and important decision in case of *Union of India v. Association for Democratic Reforms*, a three-judge Bench of this Court raising a question - in a nation wedded to republican and democratic form of government, whether before casting votes, the voters have a right to know relevant particulars of their candidates contesting election to the Parliament or to the legislature of States, deliberated on the powers of the Election Commission under Article 324 of the Constitution, and observed as under:—

"46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case* [(1985) 4 SCC 628] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

3. ....

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the

*process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted."*

*21. It is also pertinent to note that the insertion of Rule-4A and Form-26 appended to the said Rules is also culmination of the said observations made this Court in the aforesaid case, which require the candidate to disclose the information and particulars in the form of affidavit to be submitted along with the nomination paper.*

*22. The respondent-Election petitioner in this case has challenged election of the appellant-retuned candidate under Section 100(1)(d)(iv) on the ground of non-compliance of the said Rule-4A and the Form-26. However, the appellant had filed the applications seeking dismissal of the Election petition in limine, for the non-compliance of the provisions of Section 83(1)(a) of the said Act, read with Order VII, Rule 11 of CPC.*

*23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely - "an Election petition must contain a concise statement of material facts on which the petitioner relies", is that such non-compliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. "Material facts" are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure 1908. Material facts would include positive statement of facts as also positive statement of a negative fact.*

*24. A Three-Judge Bench in Hari Shanker Jain v. Sonia Gandhi (supra) had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the Election petition holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of*

*Order VII Rule 11 CPC. It was observed in para 23 and 24 as under:—*

*"23. Section 83 (1) (a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Civil Procedure Code, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603], Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433].) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.*

*24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to*

*adduce any evidence. No amount of evidence can cure basic defect in the pleadings."*

*25. In case of Mahadeorao Sukaji Shivankar v. Ramaratan Babu, a Three-Judge Bench of this Court again had an occasion to deal with the issues as to what would constitute "material facts" and what would be the consequences of not stating the "material facts" in the Election petition, as contemplated in Section 83(1)(a) of the RP Act, and the Court observed as under:*

*"6. Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.*

*7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."*

*26. In Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar, this Court has discussed number of earlier decisions on the issue as to when the Election petition could be dismissed summarily if it does not furnish the*

*cause of action in exercise of powers under the Code of Civil Procedure read with Section 83 of the R.P. Act.*

*"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.*

*51. This Court in Samant N. Balkrishna case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

*52. In V. Narayanaswamy v. C.P. Thirunavukkarasu (2000) 2 SCC 294 this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In L.R. Shivaramagowda v. T.M. Chandrashekar (1999) 1 SCC 666 this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under : (SCC p. 677, para 11)*

*"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material*

*facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment."*

53. In *Udhav Singh* case [(1977) 1 SCC 511] this Court observed as under: (SCC pp. 522-23, para 41)

*"41. Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."*

54. In *H.D. Revanna* case [(1999) 2 SCC 217] the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In *Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi* [(2005) 5 SCC 46] this Court observed thus : (SCC p. 51, para 14)

*"14. Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Civil Procedure Code, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11, Order 7 of the Code."*

55. In *Harkirat Singh v. Amrinder Singh* [(2005) 13 SCC 511] this Court again reiterated the distinction between "material facts" and "material particulars" and observed as under : (SCC p. 527, paras 51-52)

"51. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

56. In *Sudarsha Avasthi v. Shiv Pal Singh* [(2008) 7 SCC 604] this Court observed as under : (SCC p. 612, para 20)

"20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose."

57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.

58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete

*cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under : (SCC pp. 526-27)*

*"48. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."*

*27. In Ram Sukh v. Dinesh Aggarwal (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold. The Court observed in para 14 to 21 as under:—*

*"14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:*



*(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;*

*(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;*

*(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;*

*(iv) material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and*

*(v.) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.*

*15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.*

*16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus : (SCC pp. 631-32, para 50)*

*"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings*

*must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."*

*17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:*

*(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and*

*(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.*

*In our opinion, both the contentions are misconceived and untenable.*

*18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.*

19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer *res integra*. A similar plea was negatived by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh* [(1972) 1 SCC 214], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said : (SCC p. 221, para 23)

"23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."

20. The issue was again dealt with by this Court in *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315]. Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* [(1969) 3 SCC 238] and *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in *Azhar Hussain* case [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:

"100. Grounds for declaring election to be void.—

*(1) Subject to the provisions of sub-section*

*(2) if the High Court is of opinion—*

*\*\*\**

*(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—*

*\*\*\**

*(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.”*

*It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.”*

*28. The legal position enunciated in afore-stated cases may be summed up as under:—*

*i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.*

*ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.*

*iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.*

*iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance*

*with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.*

*v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.*

*vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.*

*Conclusion:*

*29. In the light of the afore-stated legal position, let us see whether the respondent/election petitioner had complied with the requirements of Section 83(1)(a) of the RP Act, by stating "material facts" in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the Appellant-returned candidate to be void. The bone of contention raised by the learned counsel appearing for the respondent-election petitioner is that the Election Commission of India had called for the information prescribing the Form 26 in regard to status of filing of income tax return of candidates and their family members by exercising powers under Article 324 of the Constitution of India and in that the petitioner had provided information that her spouse was working as consultant at foreign country and earning salary against the column No. 8, Serial No. 9(b) and 9A(b), respectively under Part A of Form 26. Besides, she had mentioned "No" to the query regarding Income tax dues of her spouse, (mentioned as "Ethumilai" in Tamil language). She had further stated that her spouse had bank accounts in Singapore with deposit of dollars against column No. 7 Serial No. (ii) of column in Part A of Form 26 but had failed to disclose the status of filing income tax return of her spouse in the foreign country. He therefore submitted that these material facts which have already been stated in the Election petition, were sufficient to constitute cause of action for filing Election petition under Section 100(1)(d)(iv) of the RP Act.*

*Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.*

*32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d)(iv) of the said Act, then also there are no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the RP Act.*

*33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the*

*present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951.*

*34. In that view of the matter, Election petition being no. 3/2019 filed by the respondent-election petitioner deserves to be dismissed, and is accordingly dismissed."*

18. Reliance was also placed on following paragraphs in case of Azhar Hussain v. Rajiv Gandhi, reported in 1986 Supp SCC 315:

*"8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act [87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits: Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings. (2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.] . Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:*

*"Order 6, Rule 16: Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—*

- (a) which may be unnecessary, scandalous, frivolous or vexatious; or*
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or*
- (c) which is otherwise an abuse of the process of the court.*

*Order 7, Rule 11: Rejection of plaint.—The plaint shall be rejected in the following cases:*

- (a) where it does not disclose a cause of action; "*

*9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.*

*10. There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)*

*"The allegations in para 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the*



*meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.*

*Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed."*

*11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant case [Samant N. Balkrishna v. George Fernandez(1969) 3 SCC 238] has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh case [Udhav Singh v. Madhav Rao Scindia(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt*

*practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

#### *Ground B*

*25. In this case also, no time, date and place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated. No allegation is made to the effect that it was in order to prejudice the election of any candidate. Or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been spelled out. So far as the meeting is concerned, the principle ["... The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point..." ] laid down in Nihal Singh case [(1970) 3 SCC 239] discussed in the context of the charge contained in ground II(i) is attracted. The view taken by the High Court is therefore unexceptionable.*

#### *Ground II(iii)*

- 26. The alleged corrupt practice as incorporated in ground II (iii) reads as under:*

*"In line with the respondent's speeches, his workers with the knowledge and consent of the respondent and other agents of the respondent entrusted with the task of conducting the election campaign caused a poster of Hindi*

and Urdu to be affixed in all prominent places throughout the constituency. The said poster was in fact a page of the Blitz newspaper of 30-6-1984 called the Id Special. The Id that year was on 1-7-1984. The heading of the said poster which was underlined in red alleged conspiracy between the leader of the petitioner party and Bhindaranwale. Photographs of Mrs Maneka Gandhi and Bhindaranwale appeared separately on left and right hand corners of the said advertisement. A literal English translation of the poster is given below: A copy of the said poster will be filed as Ex. B. The poster also purported to carry a facsimile copy of a letter dated 10-9-1983, purporting to be addressed by Shri Kalpnath Sonkar, a member of the Rashtriya Sanjay Manch, to Shri Bhindaranwale. The letter is a forgery and that it was forged was publicly stated by alleged author of the alleged letter and a criminal case is pending in the matter thereof. The letter was fabricated expressly for the express purpose of showing:

- (a) that Mrs.Maneka Gandhi was in secret conspiracy with Bhindaranwale.
- (b) that Mrs.Maneka Gandhi illegally supplied arms to Bhindaranwale and other secessionists and terrorists.
- (c) that Maneka Gandhi was in sympathy with the creation of Khalistan and the division of the country and the use of violence to achieve that end.

The said allegations are totally false and fabricated. The respondent knew them to be false. He did not and could not believe them to be true. That complaints were made to the District authorities about the obnoxious wall paintings and posters to which the attention of the respondent had been drawn. The said authorities while clearly admitting the RSM election agents and worker as well as to the press correspondents that they were objectionable took no steps to remove or obliterate them. Prominent newspapers and press correspondents continued to draw attention to those slogans and posters but the respondent or his workers took no step whatsoever to stop their exhibition, circulation and use. The respondent condoned and sanctioned the exhibition and circulation of this poster. He did nothing to stop the use thereof by his workers. The wall painting mentioned above

*and this poster were paid out of Congress (I) party's funds. These were therefore, his own expenses sanctioned by himself. Cutting of some of the newspaper reports will be filed as Ex. C."*

*Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?*

*35. The pleading therefore does not spell out the cause of action. So also on account of the failure to mention the material facts, the court could not have permitted the election petitioner to adduce evidence on this point. It would therefore attract the doctrine laid down in Nihal Singh case [(1970) 3 SCC 239] and there would be nothing for the respondent to answer.*

*Ground XV*

*36. Alleged corrupt practice as incorporated in ground XV reads as under:*

*"That during the course of the campaign, the respondent, his election agent and his party brought into existence a propaganda committee to further the prospects of the respondent's election. This committee was called the 'Amethi Matdata Parishad'. Through the agency of this committee, the respondent, his election agent and others with their consent and knowledge caused another pamphlet to be printed, published and circulated during the entire election campaign under the title 'How do Intelligent people think? Who is an obstacle in the progress of Amethi'. The said pamphlet inter alia, contains the following statements:*

*'That Maneka Gandhi is surrounded only by anti-social elements. She was also seen in the company of terrorists. Her whole campaign is based on money.... In my view, Maneka seems to have a big hand in the fire of Punjab. Maneka has no merit of her own. If she had anything in her, it would have come out before her marriage to Sanjay. If she had any desire for leadership or service of the country, she would have cooperated with her husband. Politics is for her a pursuit of pleasure ("shaukiya dhandha"). Therefore, she is conducting her politics on the strength of people like Haji Mastan and Virendra Shahi.... A woman who could not protect the honour of a vast country like India. Maneka is the destroyer of the country.'*

*The petitioner says that the entire trend of this pamphlet and the propaganda conducted on the basis thereof casts serious aspersions on the personal character of a candidate. Each of these statements is false to the knowledge of the respondent and others. The printing, publication and circulation of the said pamphlet and the propaganda based thereon was, in any event, done by the agents of the respondent and in the interests of the election of the respondent. These statements are in relation to the personal character or conduct of a candidate and they are in relation to her candidature. These statements were reasonably calculated to prejudice the prospects of the petitioner's election. The election of the respondent is thus liable to be declared void under Section 100(1)(b). This was also liable to be set aside under Section 100(1)(d)(ii), inasmuch as, the result of the election insofar as it concerned the returned candidate, has been materially affected by this gross corrupt practice.*

*In this pamphlet, the same Jagdish Piyush who is referred to in the pamphlet in the preceding paragraphs, is one of the contributors and in that contribution, he has referred to his publication mentioned in the previous paragraphs."*

*Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?*

*37. The High Court observed:*

*"The petitioner has set out specific statements from this pamphlet commenting adversely on the character and conduct of Smt. Maneka Gandhi where, inter alia, her association with terrorists and other persons of questionable antecedents was set out. It has been stated that these statements are false to the knowledge of the respondent and others and the pamphlet was distributed by the agents of the respondent in the interests of the election of the respondent and that the result, so far as the respondent is concerned, has been materially affected by the corrupt practice. Here also, the petitioner has made an omnibus statement of the printing, publication and circulation of the pamphlet by the respondent, his election agent and others with their consent and knowledge without trying to pinpoint*

*the particular person who had done so. The places, dates where the pamphlets were distributed have also not been indicated. It was necessary for the petitioner to do under the law as set out above. The pleading is therefore, vague, embarrassing and lacks in material facts and, therefore, must fail. The petitioner's prayer for an amendment to delete the proposal to file a copy of the pamphlet is allowed as it is evidence and not integral part of the petition."*

*Whether the High Court was right in taking the aforesaid view?*

*38. In view of the doctrine laid down in Nihal Singh case [(1970) 3 SCC 239] as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh case [(1970) 3 SCC 239]. The learned counsel for the appellant is unable to show how the court has committed any error in reaching this conclusion."*

19. On other hand, learned counsel for petitioners sought to oppose application. It was submitted that application was misconceived and filed with intention to dilate proceedings.

20. It was submitted Part VI of ROPA dealt with disputes regarding elections. Section 79 provided definitions, while Section 80 provided that no election could be called in question except by an election petition presented as provided in Part VI.

21. Section 80A provided that only High Court would have jurisdiction to try election petition which could be presented as per Section 81 on any grounds set out in Section 100 and 101 of ROPA by any candidate at such election, or any elector within 45 days of declaration of results of such election. Sub-section (3) required election petition to be filed with as many copies as respondents and each copy to be attested by petitioner. It was submitted that Section 82 prescribed parties to petition, while Section 83 its contents and Section 84 relief that could be claimed. Further Section 86 stipulated procedure for trial of election petitions. It was further submitted that as per Section 87 (1), provisions of CPC would as far as possible apply to election petitions subject to Election Petition Rules that may be framed. It was submitted that Section 100 stipulated limited grounds on which elections could be declared void. It was submitted Section 100 (1) (b) mandated establishment of commission of corrupt practice by returned candidate or with consent of returned candidate or his election agent.

22. It was further submitted as per Section 100 (1) (d) (ii), election could be declared void even where it were established that result of election was materially affected by

any corrupt practice committed in interest of returned candidate by an agent other than his election agent. Attention was also drawn to definition of corrupt practices under Section 123 of ROPA. It was submitted, specific corrupt practice alleged in present petition was under Section 123 (1) (A) (b) (ii) namely bribery of electors to vote for returned candidate at election.

23. It was submitted, there was no dispute about election petition suffering from technical defects regarding proper Court, proper parties and reliefs sought. It was submitted that in paragraph no.3, petitioner had averred about conduct of elections and declaration of results wherein respondent was declared elected. It was submitted in paragraph no.6, petitioners had provided details of they being electors by references to voters list of constituency, paragraph no.7 about respondent being returned candidate. It was submitted that in paragraph no.8 details of corrupt practice being committed as per instructions of respondent were stated. It was submitted that there was specific assertion about meeting being convened by respondent on 06.05.2023, 07.05.2023 and 09.05.2023 at Block Congress Committee



Office. It was also specifically averred that respondent was personally present in said meeting. In subsequent paragraph no.14, details with sufficient particulars of guarantee cards being distributed as inducement to vote in favour of returned candidate, registration of FIR against respondent for offence of commission of corrupt practice under Section 123 (1) A, B and Section 127A of ROPA were stated.

24. Insofar as requirement of affidavit in Form no.25, it was submitted that affidavit filed would be sufficiently compliant. It was submitted that form of affidavit was not material and even if affidavit were to be defective, same was curable and not fatal. Therefore, application filed for rejection of election petition on ground of failure to comply with Rule 94A of Rules would be liable for rejection.

25. It was further contended that respondent had entered appearance and filed written statement on 09.10.2023, but no specific contention about petition being defective for want of material etc have been urged.

26. In response to contention of applicant, it was submitted that production of all documents based on which petitioners were seeking for avoiding election of respondent at

time of filing petition was not mandatory. Since it was matter of evidence, same could be produced during trial.

27. Insofar as objections about failure to disclose whether petitioners had personal knowledge about commission of corrupt practice by returned candidate or that they believed them to be true from information received from someone else, which they believed to be true, it was contended that petitioners were electors of Ramanagara Assembly Constituency and had stated their credentials in paragraph no.6 of petition. They had also stated they had full knowledge, details of same would be revealed during trial and not at stage of consideration of application under Order VII Rule 11.

28. Insofar as requirement of material facts with full particulars, it was submitted that same were duly stated in paragraph no.8 of petition with particulars of date, time and place of holding of meeting, persons who handed over gift cards to petitioners and manner of commission of corrupt practice by returned candidate. It was submitted that petitioners had also stated about press conference held by returned candidate on 22.05.2023, at 4:30 PM in Congress Office, Ijoor, Ramanagara, wherein he admitted to have issued

gift cards to voters as reward for voting in his favour. Even said assertion was with full particulars including time, date and place of holding such press conference and also manner in which they had obtained copy of unedited video of press conference. In fact, petitioners had made transcript of entire press conference, part of petition.

29. It was further submitted that in paragraph no.14 of petition, petitioner had stated about registration of FIR in Crime no.39/2023, on 10.05.2023 against returned candidate, for offences punishable under Sections 123 (1) (A) and (B) and 127A of ROPA, on complaint of Mr.Rangaraju, Member of Flying Squad Team that one Pradeep, MCC Nodal Officer received complaint that *gift cards* were distributed on 10.05.2023 to induce voters to vote in favour of returned candidate and during inspection at polling stations no.108, 117 and 118, he found a woman carrying 'gift card' displaying photo, name and symbol of political party of returned candidate.

30. It was submitted that based on above facts/allegations, petitioners had sought for setting aside election of returned candidate. Therefore, on perusal of entire election petition, it could be seen to disclose clear and complete

cause of action against returned candidate. Hence, application filed was liable to be dismissed.

31. It was also contended that it was not case of returned candidate that petitioners had not complied with Section 81 of ROPA, but allegation was mainly about non-conformity with Section 83 of ROPA. Likewise, contents of affidavit filed in support of present application would reveal only allegation of failure to provide 'full material particulars' and not 'material facts', which is held not valid ground for rejection of petition at threshold.

32. It was lastly contended that no contention of petition being defective for want of full particulars of material facts was even urged. Hence, application was wholly untenable and liable for rejection.

33. Reference was made to following observations of Hon'ble Supreme Court in case of Thangjam Arunkumar v. Yumkham Erabot Singh, reported in 2023 SCC OnLine SC 1058:

*"This appeal arises out of the decision of the High Court of Manipur dated 11.04.2023, whereby the returned candidate's application under Order 7 Rule 11 of the Civil Procedure Code, 1908, to dismiss the election petition filed by the unsuccessful candidate on the ground that it lacks material particulars and is in violation of mandatory*

*requirements of law was rejected by the High Court. The returned candidate is the Appellant before us.*

*Facts:*

*2. The short and precise facts necessary for our consideration are as follows. The Appellant is the returned candidate to the XII Manipur Legislative Assembly, having been elected from the 15-Wangkhei Assembly Constituency. The Respondent No.1, the unsuccessful candidate moved Election Petition no.24 of 2022 alleging violations under Sections 80, 80A, 81, 84 read with Sections 100(1)(d)(iv) and 101 of the Representation of People Act, 1951. The election petitioner prayed that the election of the Appellant be held void and also to declare him to be the elected candidate. It is important to note that the election petition alleges corrupt practice, in as much as the petitioner pleaded that the returned candidate has not provided the material particulars with respect to a financial transaction relating to financing a loan.*

*3. In response to the election petition, the Appellant moved two applications under Order 7 Rule 11 read with Section 151 of the CPC and under Section 86 of the Act seeking dismissal of the election petition on the grounds of*

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*(i) non-disclosure of cause of action/triable issue vis-à-vis the alleged corrupt practice committed by the Appellant;*

*(ii) the absence of a concise statement of facts as mandated under Section 83 of the Act; and*

*(iii) for not serving a true self attested copy of the election petition on the returned candidate as provided under Section 81 of the Act. Apart from the above, and more importantly, the Appellant also sought dismissal of the election petition on the ground that the Form-25 affidavit as prescribed under Section 83 of the Act r/w Rule 94A of the Conduct of Election Rules, 1961 has not been filed along-with the election petition. It was alleged that such an affidavit is mandatory, as the election petition raises allegations of corrupt practice.*

*4. The High Court, by the order impugned, dismissed the applications under Order 7 Rule 11 of the CPC. The High Court observed that - (i) the election petitioner had elaborately pleaded all the material facts and set forth full*

*particulars of all the actions and omissions of the Appellant, sufficient to constitute a case of corrupt practice. The High Court, therefore, concluded that there is a cause of action and triable issues; (ii) the High Court also concluded that the alleged non-compliance of Section 81(3) of the Act is incorrect as the election petitioner had effectively attested the election petition. For this purpose, High Court relied on the decisions of this Court in Ch. Subbarao v. Member, Election Tribunal, Hyderabad, and also a decision of the same Court in Pukhrem Sharatchandra Singh v. Mairembam Prithviraj @ Prithibiraj Singh, later came to be upheld by this Court in Mairembam Prithviraj @ Prithviraj Singh v. Pukhrem Sharatchandra Singh. The High Court observed that although the election petitioner attested the election petition as "true copy of the original" and not as "true copy of the petition", the same is in compliance with Section 81(3) of the Act.*

*5. The submission that in all cases involving allegations of corrupt practices, the election petitioner must mandatorily file an affidavit under Section 83(1) of the Act was rejected without much discussion. The High Court simply following the decision of this Court in Lok Prahari through its General Secretary v. Union of India, rejected the plea.*

*Submissions:*

*6. Mr.Devadatt Kamat, learned senior counsel appearing for the Appellant initially argued the first two grounds, namely that there is a non-disclosure of the cause of action and also that there is a complete non-compliance of the requirement under Section 81(3) of the Act with respect to the attestation of the election petition. However, as we expressed our disinclination to interfere on those grounds, he took up the alternative point and emphatically argued that the judgment of the High Court is unsustainable as the election petition completely violated the 'mandatory' requirement of 83(1)(c) of the Act. He argued that the election petition must fail for not filing the additional affidavit in support of the allegation of corrupt practice. He elaborated this point by taking us through the Section, and in particular, the proviso which requires that in cases of corrupt practice, "the petition shall also be accompanied by an affidavit".*

*7. On the specific submission of Mr.Devadatt Kamat as to how the election petition alleging corrupt practice must fail for not filing the additional affidavit, Mr.Shadan Farasat, learned counsel for the election petitioner submitted that no such additional affidavit is filed. Mr.Farasat, however,*

*strengthened his case in the written submission by referring to the decisions of this Court in G.M. Siddeshwar v. Prasanna Kumar, and A. Manju v. Prajwal Revanna, where it was held that non-filing of a Form-25 affidavit is a curable defect.*

*Issue for consideration:*

*8. The only issue for consideration is whether the election petition is liable to be dismissed by allowing the Order 7 Rule 11 application for non-compliance of Section 83(1)(c) of the Act.*

*Analysis:*

*9. We may at the outset state that there is absolutely no consideration of this issue by the High Court. Neither the implications of Section 83(1)(c) of the Act, nor the interpretation of its proviso were taken up for consideration by the High Court. Further, surprisingly, the High Court simply referred to the decision of this Court in Lok Prahari (supra) and rejected the submission. Lok Prahari (supra) has no bearing on the issue.*

*10. We would refer to the statutory provisions and the judgments on the point for answering the question of law raised by the Appellant. We will first refer to Sections 83 and 86 of the Act and Order 6 Rule 15 of the CPC.*

*83. Contents of petition — (1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.*

*(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

*86. Trial of election petitions — (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.*

*Order 6 Rule 15: Verification of pleadings — (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.*

*(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

*(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

*(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."*

*11. The first decision on this issue is by a Constitution Bench in T.M. Jacob v. C. Poullose. In the said case, the returned candidate was defending an election petition filed against him on the ground of non-compliance with the requirements under Section 81(3) of the Act. This Court, after going through the difference in the legislative intent of Sections 81 and 83 of the Act, observed that non-compliance with the requirements of the former provides for an automatic dismissal of an election petition under Section 86 of the Act, and non-compliance with the latter is a curable defect and would not merit dismissal at the threshold. In this light, this Court observed that:*

*"38. ... to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes — those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in Murarka Radhey Shyam, (1964) 3 SCR 573 and Ch. Subbarao, (1964) 6 SCR 213 cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be*



*dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure."*

*12. In Siddeshwar (supra), the matter came up before a three-judge bench of this Court by way of a reference. When the matter was placed before a two-judge bench, it was contended, relying upon P.A. Mohammed Riyas v. M.K. Raghavan, that an election petitioner has to file the Form-25 affidavit in support of the corrupt practice allegation, in addition to the usual verifying affidavit which forms an integral part of the election petition. On the other hand, the two-judge bench was also apprised of judgments to the contrary which held that not filing of the affidavit is a curable defect. In order to give quietus to the issue, the matter was referred to a bench of three judges. After relying on various precedents, the three Judge Bench in Siddeshwar observed as under:*

*"1. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Civil Procedure Code, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511, which suggests to the contrary, does not lay down correct law to this limited extent.*

*2. Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961, whether the election petition is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951.*

*22. A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is "also" required to file an affidavit in support of the pleadings. Does this mean, as*

*suggested by the learned counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits—one in support of the allegations of corrupt practices and the other in support of the pleadings?*

*23. A reading of Section 83(1)(c) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in CPC. That Order 6 Rule 15 requires an affidavit "also" to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document.*

*25. It seems to us that a plain and simple reading of Section 83(1)(c) of the Act clearly indicates that the requirement of an additional affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of the pleadings filed under CPC may be mandatory in terms of Order 6 Rule 15(4) CPC, the affidavit is not a part of the verification of the pleadings—both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1)(c) of the Act.*

*37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.*

*38. Recently, in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say:*

*"28. ... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so."*

*We have no reason to take a different view. The contention urged by Siddeshwar is rejected."*

*(emphasis supplied)*

*13. More recently, in A. Manju v/s Prajwal Revanna (supra), this Court dealt with the same question as to whether an election petition containing an allegation of corrupt practice but not supported by an affidavit in Form 25, is liable to be dismissed at the threshold. This Court had observed:*

*"26. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 as well as G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form."*

*(emphasis supplied)*

*14. The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.*

*15. In the instant case, the election petition contained on affidavit and also a verification. In this very affidavit, the election petitioner has sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c) of the Act."*

34. Following paragraphs in Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao, reported in 2023 SCC OnLine SC 871 were also referred to:

*"The present appeal by special leave questions a judgment and order of the Telangana High Court dismissing an application which sought rejection of the respondent's election petition. The appellant had contended that the election petition (hereafter "the petition") did not disclose any cause of action and was barred in law and was liable to be rejected.*

*2. In the present case, the High Court noticed the contentions of the parties as well as the pleadings and was of the opinion that having regard to the terms of Order VII Rule 11 CPC, only the averments in the petition and the accompanying documents could be considered and not any other materials brought on record during the course of the proceedings. The Court was of the opinion that taking in the overall conspectus of the facts available on the record did not lead to a compelling reason for rejecting the election petition. Accordingly, the appellant's application was dismissed, and the contentions were kept open to be agitated during the trial.*

*7. The appellant's main contention was that though the appellant had urged several grounds with respect to its explanation for the alleged non-compliance of what were termed by the election petitioner as mandatory requirements, it was also alleged that Section 81(3) had not been complied with. However, during the hearing, the arguments on behalf of the appellant, by Mr. C.S. Sundaram, Senior Advocate, were confined to submissions to the aspect regarding non-disclosure of criminal cases. The first related to a criminal case pending before the*

*CJM, Garhwa bearing CR 96P; case No. CF 97/13 dated 20.03.2013 in Form 26, i.e., the election affidavit. The second case was with respect to non-disclosure in Form 26 of conviction. It was alleged that the cases referred to in the election petition, i.e., Labour Enforcement Officer v. Patil Construction represented by (1) Mr. B.B. Patil (partner) and (2) Mr. M.B. Patil (partner) (Case No. 20/12), this case pertained to non-payment of minimum wages to workers under the Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956. The appellant was convicted on 30.07.2013; the second case pertained to State through Labour Enforcement Officer v. Patil Construction represented by B.B. Patil and M.B. Patil before Sub Divisional Judicial Magistrate registered under Section 22A of the Minimum Wages Act, 1948 for non-maintenance of records of workers/employers. The appellant was convicted on 05.09.2017.*

*8. It was argued by Mr. Sundaram that the reference to the pending case before the CJM Garhwa District, in the documents filed along with the election petition, was an abuse of process and a clear case of interpolation. Learned counsel pointed out that this aspect has been acknowledged by the main judgment in para 27, whereby after considering the certified copy relating to that case, the court observed that there appeared to be some interpolation. Learned counsel reiterated the submissions and referred to certified copies which were placed on record. He also referred to the original of the complaint which was summoned by this court during the present proceedings. It was further stated that the conclusion of the High Court with respect to the non-disclosure of two cases in respect of the Payment of Wages Act and Minimum Wages requiring them to be gone into during the trial is in error. Learned counsel contended that even upon conviction, the minimum threshold indicated in Section 33A of the Act is not satisfied because, in either way, the maximum sanction is a penalty.*

*9. Dr.A.M. Singhvi, learned senior counsel for the election petitioner, urged that the impugned order correctly appreciated the law relating to Order VII Rule 11 and dismissed the appellant's application. Counsel reiterated that the suppression of the truth with respect to criminal cases, i.e., non-disclosure of cases where the petitioner was convicted and of pending cases, in Form-26 affidavit were in relation to the following:*

*a) Pending cases: The appellant did not disclose the criminal case pending before the Chief Judicial Magistrate Garhwa relating to Forest Department cases.*

*b) Regarding cases in which the appellant was convicted (in section 6 of Form-26), there was a deliberate attempt to suppress the truth; the appellant had written "not applicable" when there were two cases in which he was convicted: firstly case No. 20/2012 Labour Case relating to Payment of Wages and Minimum Wages Act, and secondly, Case No 1/2013, another case relating to Payment of Wages and Minimum Wages Act.*

*10. It was submitted that going into the merits of whether those cases actually existed, and related to the provisions of the Act, would amount to a mini-trial which is plainly impermissible while considering an application seeking rejection of the petition. It was submitted that the law on the subject is well settled. Counsel stated that the judgments of this court, such as Saleem Bhai v. State of Maharashtra and Mayar (H.K.) Limited v. Owners and Parties, Vessel M.V. Fortune Express had, in no uncertain terms, ruled that while considering an application under Order VII Rule 11, CPC, only the averments in the pleadings (i.e., in the suit or petition) and the accompanying documents can be looked into. Therefore, reference to and reliance on any document which was not part of the petition, but produced as a part of the respondent/defendant's plea, cannot be considered.*

*26. It is a salutary position in law that there cannot be a partial rejection of the plaint (or petition, as in this case) in exercise of power under Order VII Rule 11, CPC. This court had stated this principle, in Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd. in the following manner:*

*"This cannot elevate itself into a Rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected Under Order VII Rule 11. In all such cases, if the plaint survives against certain Defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial."*

*27. This principle was stated clearly, in D. Ramachandran v. R.V. Jankiraman which, in relation to an election petition, explained the position as follows:*

*"The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition."*

28. There is some authority for the proposition that the court's power under Order XII Rule 6, CPC, is not only discretionary but requires exercise of caution and that unless an admission is unambiguous, enabling the court to draw a decree, the power would not be exercised. Thus, in *Himani Alloys Ltd. v. Tata Steel Ltd.*, this court held that:

*"It is true that a judgment can be given on an 'admission' contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear 'admission' which can be acted upon. (See also *Uttam Singh Duggal and Co. Ltd. v. United Bank of India* 2000 Supp (2) SCR 187; *Karam Kapahi v. Lal Chand Public Charitable Trust* (2010) 4 SCR 422 and *Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha* (2010) 6 SCC 601"*

29. A plain look at the election petition reveals that apart from allegations pertaining to non-disclosure of criminal cases pending against the appellant, or cases where he was convicted, other averments and allegations have been made regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers' reach amongst the populace, etc. The alleged non-compliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary proceedings under Order VII Rule 11, CPC, or even under Order XII Rule 6, CPC. Even if the allegations regarding non-disclosure of cases where the appellant has been arrayed as an accused, are ultimately true, the effect of such allegations (in the context of provisions of law and the non-disclosure of all other particulars mandated by the Election Symbols orders) has to be considered after a full trial. The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, wholly. Even in respect of the undeniable nature of the judicial record, the effect of its content, is wholly inadequate to draw a decree in part. This court has also ruled that the truth or otherwise of anything is ordinarily a matter of evidence, in a full-blown trial, in *Virender Nath Gautam v. Satpal Singh*:

"52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside."

35. And on following paragraphs in case of *A. Manju v. Prajwal Revanna*, reported in (2022) 3 SCC 269:

"Facts:

1. The moot point for consideration in the present appeal is whether an election petition can be thrown out at the threshold on a plea of the respondent/elected candidate that the petition is not supported by an affidavit in Form 25, as prescribed under Rule 94-A of the Conduct of Election Rules, 1961, even though the petition is based on allegations of corrupt practices.



*Conclusion:*

22. We must begin at the inception by stating that intrinsically, election law is technical in nature. In the present matter, an election conducted under an independent body like the Election Commission is sought to be assailed, where the mandate of the public has gone in a particular way. The allegations must strictly fall within the parameters of the manner in which such a mandate can be overturned. The primary plea taken by the appellant is largely that success in the elections was obtained by concealment of material, which would have been germane in determining the opinion of the electorate. In effect, were such material to be available with the electorate, they would have exercised another option on the basis of it. However, while the requirements to be met in the election petition may be technical in nature, they are not hypertechnical, as observed in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788]. We have considered the aforesaid aspect by quoting the observations made therein which have received the imprimatur of a larger Bench.

23. In the conspectus of the aforesaid, if we examine the facts of the present case, the hypertechnical view sought to be taken of non-signing and verification of the index and the synopsis has been rightly rejected by the High Court.

24. Thus, the real and core question before us is that in view of the allegations of the alleged non-disclosure of assets in Form 26 by Respondent 1 being cited as "corrupt practice", would it be mandatory for the election petitioner to file an affidavit in Form 25 and what would be the consequences of not filing such an affidavit.

25. We may take note of the Constitution Bench judgment of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, (1964) 3 SCR 573: AIR 1964 SC 1545] which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] to come to a conclusion that non-compliance with the proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could

*be remedied i.e. even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33-A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of Respondent 1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.*

*26. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] as well as G.M. Siddeshwar [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715], ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.*

*27. The arguments of the learned counsel for Respondent were predicated on the distinction between the absence of an affidavit and a defective affidavit. This presupposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very narrow reading of the*

*provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of Respondent 1.*

*28. The appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by Respondent 1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.*

*29. The result of the aforesaid is that the impugned order of the learned Single Judge dated 17-1-2020 [A. Manju v. Prajwal Revanna, 2020 SCC OnLine Kar 1654] is set aside and the application filed by Respondent 1 under Order 7 Rule 11, Section 151 of the said Code and Section 86(1) of the RP Act would stand dismissed with liberty to the appellant to file an appropriate affidavit in Form 25 within fifteen (15) days from today. The further proceedings in the election petition are required to be taken up urgently as almost two-and-a-half years have gone on the preliminary skirmishes rather than the meat of the matter, which we are sure the learned Single Judge of the High Court would so do."*

36. Attention was drawn to following paragraphs in *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy*, reported in (2018) 14 SCC 1:

*"1. The present appeals emanate from the judgment and order dated 2-8-2016 [Peddireddigari Ramachandra Reddy v. Madiraju Venkata Ramana Raju, 2016 SCC OnLine Hyd 218: (2016) 6 ALD 299] of the High Court of Judicature at Hyderabad for Telangana and Andhra Pradesh, striking off paras 2 and 9 to 11 of the election petition as also dismissing the election petition, being Election Petition No. 8 of 2014 filed by the appellant challenging the election of Respondent.*

*23. The central issue in these appeals is : whether the contents of the subject election petition disclose cause of action warranting a trial? The High Court by a composite judgment allowed the two applications filed by Respondent 1 (returned candidate) praying for striking out Paras 2 and 9 to 11 of the election petition, being frivolous and*

*vexatious and not containing any material facts and not disclosing any cause of action; and the second application for rejecting the election petition in limine for non-disclosure of cause of action.*

*24. Ordinarily, an application for rejection of election petition in limine, purportedly under Order 7 Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order 7 CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfill the statutory and institutional requirements referred to in clauses (a) to (f) of Rule 11. The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order 7 Rule 11 deserves consideration at the threshold.*

*25. On the other hand, the application for striking out pleadings in terms of Order 6 Rule 16 may be resorted to by the defendant(s)/respondent(s) at any stage of the proceedings, as is predicated in the said provision. The pleading(s) can be struck off by the Court on grounds specified in clauses (a) to (c) of Rule 16.*

*26. Indeed, if the defendant moves two separate applications at the same time, as in this case, it would be open to the court in a given case to consider both the applications together or independent of each other. If the court decides to hear the application under Order 7 Rule 11 in the first instance, the court would be obliged to consider the plaint as filed as a whole. But if the court decides to proceed with the application under Order 6 Rule 16 for striking out the pleadings before consideration of the application under Order 7 Rule 11 for rejection of the plaint, on allowing the former application after striking out the relevant pleadings then the court must consider the remainder pleadings of the plaint in reference to the postulates of Order 7 Rule 11, for determining whether the*

*plaint (after striking out pleadings) deserves to be rejected in limine.*

39. On reading the election petition as a whole, we have no hesitation in taking a view that the High Court misdirected itself in concluding that the election petition did not disclose any cause of action with or without Paras 2 and 9 to 11 of the election petition. Indeed, the pleadings of the election petition should be precise and clear containing all the necessary details and particulars as required by law. "Material facts" would mean all the basic facts constituting the ingredients of the grounds stated in the election petition in the context of relief to declare the election to be void. It is well established that in an election petition, whether a particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the grounds relied upon and the special circumstances of the case. Particulars, on the other hand, are the details of the case set up by the party. The distinction between "material facts" and "full particulars" has been delineated in *Mohan Rawale v. Damodar Tatyaba* [*Mohan Rawale v. Damodar Tatyaba*, (1994) 2 SCC 392. This judgment has been adverted to in the reported decision relied on by the parties. The Court noted thus: (SCC pp. 397-99, paras 10-18)

"10. We may take up the last facet first. As Chitty, J. observed, "There is some difficulty in affixing a precise meaning to" the expression "discloses no reasonable cause of action or defence". He said: "In point of law ... every cause of action is a reasonable one." (See *Republic of Peru v. Peruvian Guano Co.* [*Republic of Peru v. Peruvian Guano Co.*, (1887) LR 36 Ch D 489]) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83(1)(a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order 6 Rules 2 and 4 and Order 7 Rule 1(e) of the Code of Civil Procedure. There is a distinction amongst the

"grounds" in Section 81(1); the "material facts" in Section 83(1)(a) and "full particulars" in Section 83(1)(b).

11. Referring to the importance of pleadings a learned author says:

*'Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. ... They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award. ...'*

[See : Jacob: "The Present Importance of Pleadings" (1960) *Current Legal Problems*, at pp. 175-76.]

12. Further, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp. "Material facts" are those which a party relies upon and which, if he does not prove, he fails at the time.

13. In *Bruce v. Odhams Press Ltd.* [*Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] Scott L.J. said: "The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad." The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.

14. Halsbury refers to the function of particulars thus:

*'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required.'*

(See : Pleadings Vol. 36, para 38)

15. In *Bullen and Leake and Jacob's "Precedents of Pleadings"* 1975 Edn. at p. 112 it is stated:

*'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to "open up" the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cotton L.J. has said [Spedding v. Fitzpatrick, (1888) LR 38 Ch D 410 (CA)] , 'the old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial'.'*

16. The distinction between "material facts" and "particulars" which together constitute the facts to be proved — or the *facta probanda* — on the one hand and the evidence by which those facts are to be proved — *facta probantia* — on the other must be kept clearly distinguished. In *Philipps v. Philipps* [*Philipps v. Philipps*, (1878) LR 4 QBD 127 at p. 133 (CA)] , Brett, L.J. said:

*'I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated. ... The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence to prove those facts. Erle, C.J. expressed it in this way. He said that there were facts that might be called the *allegata probanda*, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erle, C.J. that Rule 4 [now Rule 7(1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies.'*

17. Lord Denman, C.J. in *Williams v. Wilcox* [*Williams v. Wilcox*, (1838) 8 Ad & El 314 : 112 ER 857] said:

*'It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations.'*

18. An election petition can be rejected under Order 7 Rule 11(a) CPC if it does not disclose a cause of action. Pleadings could also be struck out under Order 6 Rule 16, *inter alia*, if they are scandalous, frivolous or vexatious. The latter two expressions meant cases where the pleadings are obviously frivolous and vexatious or obviously unsustainable."

(emphasis supplied)

40. In *Harkirat Singh* [*Harkirat Singh v. Amrinder Singh*, (2005) 13 SCC 511], this Court once again reiterated thus: (SCC p. 526-28, paras 46-48)

"46. From the above provisions, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

47. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

48. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". *Burton's Legal Thesaurus* (3rd Edn.), p. 349.] The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action



*or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."*

*(emphasis supplied)*

*Again in paras 51 and 52, this Court observed thus : (SCC pp. 527-28)*

*"51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."*

*(emphasis supplied)*

*And again in para 72, the Court noted thus : (SCC p. 535)*

*"72. The Court, however, drew the distinction between "material facts" and "particulars". According to the Court, "material facts" are facts, if established would give the*

*petitioner the relief prayed for. The test is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition."*

*(emphasis supplied)*

41. In *Ashraf Kokkur* [*Ashraf Kokkur v. K.V. Abdul Khader*, (2015) 1 SCC 129], this Court adverted to the exposition in *M. Kamalam v. V.A. Syed Mohammed* [*M. Kamalam v. V.A. Syed Mohammed*, (1978) 2 SCC 659], *G.M. Siddeshwar v. Prasanna Kumar* [*G.M. Siddeshwar v. Prasanna Kumar*, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] and in Para 21 noted that the pleadings must be taken as a whole to ascertain whether the same constitute the material facts involving triable issues. In para 22, the Court observed as follows : (SCC p. 139)

*"22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial."*

*emphasis supplied)*

42. The Court then went on to analyse the decision of a three-Judge Bench in *V.S. Achuthanandan v. P.J. Francis* [*V.S. Achuthanandan v. P.J. Francis*, (1999) 3 SCC 737], wherein it has been observed that (SCC p. 748, para 16) an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. Further, material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. It has also observed that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. Further, the implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood

*and that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. This decision also adverts to Ponnala Lakshmaiah v. Kommuri Pratap Reddy [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788], wherein the Court observed that (at SCC p. 798, para 17) the courts need to be cautious in dealing with request for dismissal of the petition at the threshold and exercise their power of dismissal only in cases where on a plain reading of the petition no cause of action is disclosed.*

*43. The counsel for the contesting respondent has relied on the decisions in Pendyala Venakata Krishna Rao v. Pothula Rama Rao [Pendyala Venakata Krishna Rao v. Pothula Rama Rao, 2005 SCC OnLine AP 99: (2005) 3 ALD 47], particularly paras 8 to 10, 11 and 16 of the reported decision. In that case, on facts, the Court found that necessary material facts in relation to the ground of improper acceptance of nomination form were not pleaded by the election petitioner. In the present case, we have held that there is discernible pleading as to what objections were taken before the Returning Officer and as to why he was in error in not rejecting the nomination of Respondent 1.*

*44. The counsel for the contesting respondent also relied on the decision in Samant N. Balkrishna v. George Fernandez [Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238]. No doubt this decision predicates that election petition is a statutory proceeding and not an action at law or suit in equity. There can be no debate with regard to this proposition. At the same time, we cannot be oblivious about the scope of the enquiry permissible at this stage by the election court/tribunal while considering the application under Order 7 Rule 11(a) CPC.*

*45. In Kuldeep Singh Pathania [Kuldeep Singh Pathania v. Bikram Singh Jaryal, (2017) 5 SCC 345 : (2017) 3 SCC (Civ) 147] , the decision [Kuldeep Singh Pathania v. Bikram Singh Jaryal, 2014 SCC OnLine HP 5911] of the High Court which is similar to the one under consideration (namely, the impugned judgment) had accepted the explanation offered by the respondents and meticulously dealt with it to conclude that the petition did not disclose any cause of action since it lacked material facts. The High Court passed that order purportedly in exercise of power under Order 14 Rule 2. This Court pointed out the distinction between an order under Order 7 Rule 11 to reject the election petition in limine for non-disclosure of cause of action and an order under Order 14 Rule 2 for disposal of the petition on a preliminary issue. In*

*that case, the order passed by the High Court was relatable only to Order 7 Rule 11. This Court adverted to the decisions in Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100] and Virender Nath Gautam v. Satpal Singh [Virender Nath Gautam v. Satpal Singh, (2007) 3 SCC 617] , and explicated that under Order 7 Rule 11(a), only the pleadings of the plaintiff-petitioner can be looked at as a threshold issue. Whereas, entire pleadings of both sides can be looked into for considering the preliminary issue under Order 14 Rule 2. Neither the written statement nor the averments or case pleaded by the opposite party can be taken into account for answering the threshold issue for rejection of election petition in terms of Order 7 Rule 11(a) of the Act.*

*62. As regards the application for early hearing of the election petition filed by the appellant before the High Court, the same be treated as disposed of in terms of this order. The imperativeness of expeditious disposal of the election petition is underscored in Section 86(7) of the 1951 Act. As per the said provision, the trial of the election petition is required to be disposed of preferably within six months from the date of its presentation before the High Court. Besides, this Court in Mohd. Akbar [Mohd. Akbar v. Ashok Sahu, (2015) 14 SCC 519] has highlighted the necessity of discharging the pious hope expressed by Parliament. Therefore, we may only request the High Court to expeditiously dispose of the election petition preferably within three months from the production of a copy of this judgment by either party before it."*

37. Reference was also made to following observations in *Ajay Arjun Singh v. Sharadendu Tiwari*, reported in (2016) 15 SCC 219:

*"30. Before parting with this case, we would like to place on record that the procedure adopted by the appellant in initially filing a petition under Order 7 Rule 11 petition [Filed on 1-7-2014], praying that the election petition be dismissed and filing the instant application after a long gap [IA No. 12911 of 2014 in Election Petition No. 1 of 2014 was filed on 11-9-2014] is to be deprecated. Preliminary objections, if any (in cases where there is more than one), in an election petition are to be taken at the earliest point of time and in one go. The practice such as the one adopted by the appellant only tends to delay the adjudication of the election petition which are*

*mandated [Section 86(7), Representation of the People Act, 1951] by Parliament to be decided within a period of six months. We declare that the later of such successive petitions must be dismissed by the High Courts in limine on that count alone."*

38. Reliance was placed on decision of Hon'ble Supreme Court in case of Ashraf Kokkur v. K.V. Abdul Khader, reported in (2015) 1 SCC 129:

*"1. The simple question arising for consideration in this case is whether the averments in the election petition disclose a cause of action as required under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). Incidentally, it may be noted that the election petition has been dismissed by the impugned judgment dated 16-11-2011 [Asharaf Kokkur v. K.V. Abdul Khader, Election Petition No. 2 of 2011, decided on 16-11-2011 (Ker)], which reads as follows:*

*Judgment*

*IA No. 4 of 2011 is allowed. Election petition is dismissed in limine as it does not disclose a complete cause of action or a triable issue."*

*Of course, detailed reasons are given in the order dated 16-11-2011 [Asharaf Kokkur v. K.V. Abdul Khader, Election Petition No. 2 of 2011, decided on 16-11-2011 (Ker)] in IA No. 4 of 2011, which is also under challenge in one of the appeals.*

*22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial [see Philipps v. Philipps [(1878) LR 4 QBD 127 (CA)] (QBD p. 133); Mohan Rawale v. Damodar Tatyaba [(1994) 2 SCC 392] (SCC p.399, para16)].*

*23. This Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315], at para 11, has held that: (SCC p. 324)*

*"11. ... Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case."*

*The charge leveled in the present case is that the respondent holds an office of profit as the Chairperson of the Kerala State Wakf Board and in that capacity he enjoys the profits attached to that office from the Government of Kerala.*

*24. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737], a three-Judge Bench of this Court has taken the view that only because full particulars are not given, an election petitioner is not to be thrown out at the threshold. To quote para 15: (SCC p. 747)*

*"15. ... An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge leveled, the ground relied upon, and in the light of the special circumstances of the case."*

*Again at para 16 of V.S. Achuthanandan case [(1999) 3 SCC 737], it was held that: (SCC p. 748)*

*"16. ... So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. ... the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars."*

*(emphasis supplied)*

*25. In Hari Shanker Jain v. Sonia Gandhi [(2001) 8 SCC 233], a three-Judge Bench of this Court held that the expression "cause of action" would mean facts to be proved, if traversed, in order to support his right to the judgment of the Court and that the function of the party is to present a full picture of the cause of action with such*

*further information so as to make opposite party understand the case he will have to meet. To quote para 23: (SCC p. 251)*

*"23. ... The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238] and Jitendra Bahadur Singh v. Kirshna Behari [(1969) 2 SCC 433].) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead 'material facts' is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition."*

*26. In Syed Dastagir v. T.R. Gopalakrishna Setty [(1999) 6 SCC 337], while referring to the pleadings, it has been held at para 9 that: (SCC p. 341)*

*"9. ... In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. ... So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."*

27. In *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [(2006) 3 SCC 100], this Court at para 12 held that: (SCC p. 115)

*"12. ... The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint."*

30. Guided by the settled principles of law referred to above, we are of the view that the election petition having disclosed a cause of action, it should not have been thrown out at the threshold. The impugned order and judgment [*Asharaf Kokkur v. K.V. Abdul Khader, Election Petition No. 2 of 2011, decided on 16-11-2011 (Ker)*] are hence set aside. The appeals are allowed. The election petition is remitted to the High Court for trial in accordance with law. There is no order as to costs."

39. And to following paragraphs in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy*, reported in (2012) 7 SCC 788:

*"2. The factual matrix in which the election petition came to be filed by the respondent has been set out at length by the High Court, hence need not be recounted except to the extent the same is essential for the disposal of the appeal. The High Court has, while holding that the averments made in the election petition raised triable issues and disclosed a cause of action, observed:*



*"23. As seen from the statement showing voter turnout report in connection with General Elections, 2009 to 98, Jangaon Legislative Assembly Constituency on 16-4-2009, the total votes polled, as reported by the Returning Officer, is shown as 1,50,678 from 251 polling stations. Whereas in the final result sheet in Form 20, total valid votes is shown as 1,51,411. So, from this document, it is clear that prima facie a proper counting had not taken place. Therefore, prima facie it can be said to be an irregularity on the part of the Returning Officer involved in dereliction of the duty. Similarly, there is a specific allegation that out of 653 postal ballots, the election petitioner would have secured more than 300 votes, if properly counted, and out of the said votes, 142 votes which were validly polled in favour of the election petitioner, were illegally declared as invalid and another 52 votes polled in favour of the election petitioner were counted in favour of the first respondent, and 45 invalid votes were illegally counted in favour of the first respondent. Since the margin between the elected candidate and the nearest rival is only 236 votes, had postal ballots been counted properly, then there would have been a possibility of materially affecting the result of the election insofar as the returned candidate. So, under no stretch of imagination, can it be said that the allegations in the election petition are vague.*

*24. No doubt, it is true that in view of the decision of the Apex Court, re-counting of the votes cannot be resorted to as a matter of course and every endeavour should be made to protect the secrecy of the ballots. But, at the same time, there is suspicion of the correctness of the figures mentioned in the crucial documents of the statement showing voters' turnout report and Form 20 final result sheet, where there is a variance between total number of votes polled and votes counted. The two basic requirements laid down by the Apex Court, to order re-counting, are: (a) the election petition seeking re-count of the ballot papers must contain an adequate statement of the material facts on which the allegations of irregularity or illegality in counting are founded; and (b) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary.*

*Therefore, the questions whether counting of votes by the officials is in accordance with the rules and regulations and also whether the votes polled in favour of the election petitioner were rejected as invalid or there was improper*

counting of votes polled in favour of the returned candidate, are required to be decided after adducing evidence only. The allegation that because of the improper counting of postal ballots polled in favour of the election petitioner, the election petitioner could not secure 300 votes, if accepted as true at this stage, it would materially affect the election result because the margin of votes polled between the returned candidate and his nearest rival is very narrow. In the election petition, the allegation with regard to irregularity or illegality in counting of votes, which affects the election of the returned candidate materially, has been clearly stated in the election petition. It is not a vague or general allegation that some irregularities or illegalities have been committed in counting. Similarly, there is allegation that in the first instance, after totalling of all votes, the election petitioner secured a majority of 44 votes and the same was informed to the electronic media, and some TV channels telecasted the same immediately. A compact disc (CD) is also filed along with the election petition, in support of the said allegation. It is also alleged that none of the contested candidates filed any petition for re-counting of votes within maximum period of five minutes after the election petitioner was declared to have secured a majority of 44 votes. Therefore, there is prima facie material to show that there was irregularity or illegality in counting of votes which resulted in affecting materially the election of the returned candidate, so as to proceed further with the election petition. As, at this stage, prima facie case for re-counting, as seen from the allegations in the election petition, is made out, the pleadings cannot be struck off as unnecessary. Therefore, the question of rejecting the election petition at this stage does not arise."

14. In *Harkirat Singh v. Amrinder Singh* [(2005) 13 SCC 511] this Court once again stated the distinction between material facts and particulars and declared that material facts are primary and basic facts which must be pleaded by the plaintiff while particulars are details in support of those facts meant to amplify, refine and embellish the material facts by giving distinct touch to the basic contours of a picture already drawn so as to make it more clear and informative. To the same effect are the decisions of this Court in *Umesh Chaliyill v. K.P. Rajendran* [(2008) 11 SCC 740] and *Virender Nath Gautam v. Satpal Singh* [(2007) 3 SCC 617].

*15. The High Court has, in the present case, held that the material facts constituting the foundation of the case set up by the election petitioner have been stated in the election petition. That being so, the requirement of Section 83 of the Act viz. that "the petition shall contain a concise statement of material facts" has been satisfied. The question of dismissing the petition on that ground also therefore did not arise. The High Court in our opinion committed no wrong in coming to that conclusion.*

*17. While a successful candidate is entitled to defend his election and seek dismissal of the petition on ground legally available to him, the prolongation of proceedings by prevarication is not conducive to the ends of justice that can be served only by an early and speedy disposal of the proceedings. The courts have, therefore, to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Beyond that note of caution, we do not wish to say anything at this stage for it is neither necessary nor proper for us to do so."*

40. And from decision in case of Ram Sukh v. Dinesh Aggarwal, reported in (2009) 10 SCC 541 following paragraphs were referred to :

*"1. This appeal under Section 116-A of the Representation of the People Act, 1951 (for short "the Act") is directed against the judgment and order dated 15-1-2008 rendered by the High Court of Uttaranchal at Nainital in Election Petition no.3 of 2007 (M/S). By the impugned order, the High Court, upholding the preliminary objection raised by the first respondent, has dismissed the election petition mainly on the ground that it did not comply with the mandatory requirement of furnishing material facts so as to disclose the cause of action and was not supported by an affidavit in the prescribed form.*

*10. Section 83, the pivotal provision for the present case, requires that: (a) the election petition must contain a concise statement of "material facts" on which the petitioner relies and (b) he should also set forth "full particulars" of any corrupt practices which the petitioner*

*alleges. Proviso to clause (c) of sub-section (1) of Section 83 also provides that where the petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It is plain that the requirement of disclosure of "material facts" and "full particulars" as stipulated in the section is mandatory.*

*11. Section 86 mandates that where the election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, the High Court should dismiss the election petition. Section 87 which lays down the procedure required to be followed by the High Court while trying an election petition, requires that every election petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code to the trial of the suits, subject of course to the provisions of the Act and of any requirement made thereunder.*

*12. It is evident that the controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out "material facts" in his petition?*

*13. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See Mahadeorao Sukaji Shivankar v. Ramaratan Bapu [(2004) 7 SCC 181].) Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.*

14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., *inter alia*, laid down that:

(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;

(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(iv) material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and

(v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike

*"material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.*

*16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)*

*"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."*

41. From decision in Virender Nath Gautam v. Satpal Singh, reported in (2007) 3 SCC 617 following references were made :

*"1. This appeal is filed by the appellant against the judgment and order dated 20-12-2004 passed by the High Court of Himachal Pradesh, Shimla in Election Petition No. 2 of 2003. By the said order, the High Court upheld the preliminary objection raised by the first respondent that the election petition did not disclose material facts and was liable to be dismissed.*

*27. Conduct of elections has been dealt with in Part V. Part VI relates to "Disputes regarding elections". Section 80 requires any election to be questioned only by way of election petition. Under Section 80-A, it is the High Court which can try the election petitions. Section 81 provides for presentation of election petition and prescribes the period of limitation. Section 82 declares as to who shall be*

*joined as respondents to such election petition. Section 83 deals with contents of the petition and reads thus:*

*"83. Contents of petition.—*

*(1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.*

*(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."*

*28. Section 100 enumerates grounds for declaring election to be void which inter alia includes improper reception, refusal or ejection of any vote or the reception of any vote which is void or there is non-compliance with the provisions of the Constitution or with the Act or rules or orders made under the Act. Section 101 empowers the High Court to declare a candidate other than the returned candidate to have been elected. Section 123 declares certain practices as "deemed to be corrupt practices".*

*29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied*

*by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.*

*30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.*

*31. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus (3rd Edn.), p. 349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.*

*32. In the leading case of Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : (1874-80) All ER Rep Ext 1684 (CA)] , Cotton, L.J. stated:*

*"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."*

*33. In Bruce v. Odhams Press Ltd. [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] , Scott, L.J. referring to Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : (1874-80) All ER Rep Ext 1684 (CA)] observed: (All ER p. 294)*

*"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material'*



*statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under RSC Order 25 Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : (1874-80) All ER Rep Ext 1684 (CA)] ); or 'a further and better statement of claim' may be ordered under Rule 7."*

*34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.*

*50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

*51. In our considered opinion, material facts which are required to be pleaded in the election petition as required by Section 83(1) of the Act read with Order 7 Rule 11(a) of the Code have been pleaded by the election petitioner, cause of action has been disclosed in the election petition and, hence, the petition could not have been dismissed by*

*the High Court. The impugned order of the High Court suffers from infirmity and cannot be sustained.*

*52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.*

*53. On an additional ground also, the order of the High Court is liable to be set aside. All allegations in para 8 of the election petition, as also sub-paras (i) to (iv) of para 8 relate to improper and illegal reception and acceptance of votes and the election petitioner has challenged the election of the returned candidate on that ground and not on the ground of "corrupt practice". He was, therefore, required to state material facts in the election petition under Section 83(1)(a) of the Act. It was, however, not necessary to "set forth full particulars", which is the requirement of Section 83(1)(b) of "any corrupt practice".*

*54. The High Court dismissed the petition inter alia on the ground that paras 8(i) to (iv) lacked in material particulars. Apart from the fact that the law does not require material particulars even in respect of allegations of corrupt practice but only full particulars and if they are lacking, the petition can be permitted to be amended or amplified under Section 86 of the Act, in the instant case, clause (b) of Section 83(1) had no application and the petition has been dismissed by the High Court by applying wrong test. On that ground also, the order passed by the High Court is unsustainable (vide Harkirat Singh v. Amrinder Singh [(2005) 13 SCC 511]).*

*55. For the foregoing reasons, the appeal deserves to be allowed and is, accordingly, allowed with costs. The order passed by the High Court is set aside. Election Petition No. 2 of 2003 is restored to file, and is remitted to the High Court to decide the same on merits. Since the election took place in February 2003 and the petition was dismissed on preliminary ground as not maintainable and is required to be decided on merits, the High Court is requested to give priority and dispose it of expeditiously."*

42. From decision of Apex Court in V.S. Achuthanandan v. P.J. Francis, reported in (1999) 3 SCC 737, following observations were relied on:

*"1. The appellant, a candidate of the CPI (M) contested and lost election from 99 Mararikulam Legislative Assembly Constituency in the State of Kerala by a margin of 1965 votes. The successful candidate was Respondent 1 belonging to the Indian National Congress. Not satisfied with the result of the election, the appellant filed Election Petition No. 11 of 1996 in the High Court of Kerala mainly on the grounds of corrupt practices and illegalities in the counting of ballot-papers. He prayed for declaration that the election of the 1st respondent was void and that he was duly elected. Instead of filing any written statement, Respondent 1 filed preliminary objections which were made the basis of framing the following issues:*

- 1. Whether the petition has been presented in compliance with the provisions of the Representation of the People Act?*
- 2. Whether the absence of an affidavit in support of the allegations of corrupt practices in the petition is fatal to the maintainability of the petition?*
- 3. Whether there is a proper affidavit under Rule 94-A of the Conduct of Election Rules?*
- 4. Whether the allegations make out a cause of action at all warranting trial of the election petition?*
- 5. Whether the allegations for re-count are sufficient to hold a trial on that issue?*
- 6. Whether the failure to attest as true copy of the annexure produced along with the election petition is fatal?*
- 7. Whether the election petition is liable to be dismissed as not properly framed and filed?*

*2. Issues 1 and 4 were decided against the appellant holding that allegations made in paras 11(E), (F), (H), (J), (K), (M) and (P) lacked material facts and particulars and*

*being vague and ambiguous required no trial. Issues 2, 3 and 6 were decided in favour of the appellant. Issue 5 was decided against the appellant holding that he had failed to establish that there existed a case where the re-counting could be ordered. Ultimately, the election petition was rejected under Section 83 of the Representation of the People Act read with Order 7 Rule 11(a) of the Code of Civil Procedure with costs assessed at Rs 1500. Feeling aggrieved by the judgment of the High Court, the appellant has preferred this appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as "the Act").*

*14. In the instant case, as noted earlier, the election petition has been rejected by invoking the powers of Section 83 of the Act read with Order 7 Rule 11(a) of the Code of Civil Procedure. After referring to some judgments, the learned trial Judge of the High Court has concluded:*

*"Read as a whole, the averments contained in the election petition do not satisfy the requirements of Section 83 of the Act. No prima facie case is made out to hold that the first respondent has committed corrupt practices or that it is a fit case where re-counting is to be ordered. On a perusal of the election petition, it is seen that the petitioner has not pleaded the material facts with necessary particulars which would enable the Court to grant the prayer made in the petition. Pleadings in the election petition do not make out a cause of action for ordering re-count, as prayed for in the petition. So, the election petition is liable to be rejected under Section 83 of the Act read with Order 7 Rule 11(a) CPC."*

*15. It would thus appear that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose "material facts and full particulars" of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the "material facts" and the "material particulars" of allegations regarding corrupt practices as defined under Section 123 of the Act. The law on the point is well settled which appears to have not been taken note of or appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in *Balwan Singh v. Lakshmi Narain* [AIR 1960 SC 770 : (1960) 3 SCR 91] , *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238] , *Virendra Kumar Saklecha v. Jagjiwan* [(1972) 1 SCC 826] , *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC*

511] , F.A. *Sapa v. Singora* [(1991) 3 SCC 375] and *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* [(1995) 5 SCC 347] and a host of other authorities, this Court in *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666 : (1998) 6 Scale 361] held that while failure to plead "material facts" is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of "material particulars" can be cured at a later stage by an appropriate amendment. An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case. In *Udhav Singh* case [(1977) 1 SCC 511] the Court held: (SCC p. 523, paras 42-43)

*"In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).*

*'Particulars', on the other hand, are 'the details of the case set up by the party'. 'Material particulars' within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative."*

43. Likewise, from decision in *D. Ramachandran v. R.V. Janakiraman*, reported in (1999) 3 SCC 267 following paragraphs were referred to:

*"1. Aggrieved by the dismissal of his election petition EP No. 3 of 1996 on a preliminary issue, the appellant has approached this Court.*

*10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487]. We are satisfied that the election petition in this case could not have been rejected in limine without a trial."*

44. In case of *Subhash Desai v. Sharad J. Rao*, reported in 1994 Supp (2) SCC 446, following observations were sought to be relied on:

*"1. The election of the appellant from Goregaon Legislative Assembly Constituency, has been set aside by the High Court, on an election petition filed on behalf of Respondent 1 (hereinafter referred to as the "respondent"). The appellant had contested the election as a candidate of Shiv Sena, whereas the respondent as of Janata Dal.*

*10. Section 86 vests power in the High Court to dismiss an election petition which has not been properly presented as required by Section 81; or where there has been non-compliance of Section 82 i.e. non-joinder of the necessary parties to the election petition; or for non-compliance of Section 117 i.e. non-deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-compliance of the requirement of Section 83 of the*

*Act. But Section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected, is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices are set forth properly in the election petition, the person whose election is challenged, is bound to be prejudiced in defending himself of the charges, which have been leveled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi-criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegation, without taking the responsibility about the correctness thereof. Before the court proceeds to investigate such allegations, the court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by Section 83, have been furnished in the election petition, the election petition can be dismissed, not under Section 86 but under the provisions of the Code of Civil Procedure, which are applicable, read with Section 83(1) of the Act, saying that it does not disclose a cause of action. This aspect has been examined by this Court in detail in the cases of Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315: (1986) 2 SCR 782]; Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214: (1972) 2 SCR 742].*

*12. The scope of Section 83(1) has been recently examined in the case of F.A. Sapa v. Singora [(1991) 3 SCC 375] where it was pointed out that the underlying idea in requiring the election petition to set out in a concise manner all the 'material facts' as well as the 'full particulars', where the complaint is in respect of commission of corrupt practice, is to "delineate the scope, ambit and limits of the inquiry at the trial by the election petition". In the present case, the allegations made, in the election petition, may be true or false, but it is not possible to hold that the election petition does not disclose any material fact or give the material particulars of any of*

*the corrupt practices. It need not be pointed out that even if the court is satisfied that, in respect of one of the corrupt practices alleged, material facts and full particulars thereof have not been stated, still the election petition cannot be dismissed, if in respect of another corrupt practice the material facts and full particulars have been stated in accordance with the requirement of Section 83(1) of the Act.*

*13. In respect of the contention that the affidavit, supporting the corrupt practices alleged to have been committed by the appellant, is not as required by Section 83(1)(c) proviso, it was pointed out that reference has been made in the affidavit to paragraph 746, which contains the grounds for declaring the election of the appellant to be void and has no relation to the paragraphs giving particulars of corrupt practices. It is true that instead of saying that the statements, made in paragraph 746 of the election petition about the commission of corrupt practices, were true to the knowledge of the appellant, it should have been stated that the statements, made in paragraphs 49, 50, 50-A, 51 and 52 of the said petition were true to his knowledge. But, from bare reference to the other part of the affidavit, it shall appear that it has also been said that making of religious appeal to people and the particulars of the corrupt practices mentioned in paragraphs 49, 50, 50-A, 51 and 52 of the said election petition and the exhibits referred thereto, were true to the knowledge of the appellant. According to us, it cannot be held, in the facts and circumstances of the present case, that there was no affidavit supporting the allegations of corrupt practices, as required by Section 83(1)(c) proviso."*

45. Heard learned counsel and perused petition.

46. From above, following points arise for consideration:

- i. Whether election petition is liable to be rejected on ground of failure to indicate accrual of complete cause of action?  
And*
- ii. Whether election petition is liable to be rejected for failure to file verifying affidavit in prescribed Form no.25?*



47. Above application is filed for rejection of election petition at threshold mainly on two grounds. Firstly, for failure to plead accrual of complete cause of action as mandated by Sections 81 and 100 of ROPA. And secondly, for failure to disclose source of information as part of contention that there was failure to file proper affidavit as required under Section 83 (1) (c) proviso read with Rule 94-A of Rules in prescribed Form no.25.

48. Insofar as failure to establish complete cause of action, it is stated that allegation of corrupt practice was based on pleading that a meeting was convened in Block Congress Office, Ramanagara on 06.05.2023, 07.05.2023 and 09.05.2023 wherein, it was decided by respondent to print and distribute gift cards to all voters in Ramanagara Assembly Constituency and that respondent who was personally present directed all Block Congress members and office bearers to ensure that gift cards reach every voter and in pursuance of same, persons named in paragraph no.8 of petition and disturbed cards with consent of respondent.

49. It is also stated, whether petitioners were personally present in meeting or had knowledge about

proceedings of meeting from someone present was not disclosed. It is stated that corrupt practices defined under Section 123 of ROPA fell into two categories, first where corrupt practice is committed by returned candidate or his election agent or any other person with consent of returned candidate or election agent. It is further stated, second kind were those committed by any other person in interest of returned candidate.

50. It is further stated, Section 83(1) of ROPA mandates statement of material facts on which petitioner relies with full particulars of corrupt practice alleged to be signed and verified and also accompanied by an affidavit in support of allegation with full particulars of corrupt practice. It is further stated, petitioners were required to state in affidavit filed in Form 25 whether information about corrupt practice was within their personal knowledge or they believed it to be true. It is stated, petitioners had merely pleaded that gift cards were distributed with consent of returned candidate without disclosing basis for such assumption, especially when persons alleged to have distributed gift cards were not election agents.

51. Insofar as meeting held at Congress office, Ijoor, Ramanagara on 22.05.2023 at 4:30 p.m., where in press conference, statement was alleged to be given by returned candidate that gift cards given had not reached all concerned and efforts would be made to honour, commitment. It is stated that petitioners intend to imply consent by referring photograph of returned candidate on such card and by asserting that petitioners had voted in favour of returned candidate based on such promise. It is stated that said allegations were inferential and by attempting to circumvent requirement of pleading and establishing consent, by means of clever drafting.

52. It is also alleged that affidavits filed by petitioners though stated to be in Form no.25, did not comply with requirement of Section 83(1)(c) proviso read with Rule 94-A of Rules and Form no.25. It is stated that full particulars of material facts as mandated under Section 100 (1) (b) or Section 100 (1) (d) (ii) were not complied and therefore, petitioners had failed to establish accrual of complete cause of action. On said ground, respondent sought for rejection of election petition.

53. Said contentions are sought to be reinforced with observations of Hon'ble Supreme Court in Samant N Balakrishna's case (supra), V Narayanaswamy's case (supra), Anil Vasudev Salgaonkar's case (supra), Kanimozhi Karunanidhi's case (supra), and Azhar Hussain's case (supra).

54. In Samant N. Balakrishna's case (supra), it was observed, under scheme of ROPA, corrupt practices were of two kinds, first - those alleged to be committed by candidate himself or his election agent or any other person with consent of candidate or his election agent, where proof even single such incident would render election void, without any further requirement; And second - those committed by an agent other than election agent, where additional fact that result of election was materially affected due to same was required to be established.

55. It was further held material facts were those that were absolutely necessary to establish accrual of complete cause of action and omission to state even a single material fact would render challenge against election bad, such material facts were therefore required to be pleaded with full particulars,

to establish commission of corrupt practices of either of two kinds.

56. Insofar as meaning of full particulars of material facts, it was observed, particulars of name of person committing corrupt practice, with date, time and place will have to be mentioned, which would give a complete picture of accrual of cause of action and mere recital of provisions of enactments would not suffice.

57. In V. Narayanaswamy's case (*supra*), it is held, in an election petition on allegation of corrupt practice, cause of action cannot be equated with cause of action as is normally understood because of consequences that follow. Allegation of corrupt practices, if proved, not only does candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Therefore, while noting difference between material facts and material particulars, it was observed failure to plead material facts would be fatal to election petition, absence of material particulars can be cured at a later stage by an appropriate amendment.

58. It was observed that charge of corrupt practice being quasi-criminal in nature, Court must insist on strict compliance and that it was equally essential that particulars of charge of allegations are clearly and precisely stated in petition as required by Section 83, but also supported by affidavit, wherein petitioner was obliged to disclose his source of information in respect of commission of corrupt practice. It was observed, he must state which of allegations were true to his knowledge and which he believed to be true based on information received by him. It was further held that if relevant paragraphs of petition, wherein material facts are stated were not verified as required and allegation of corrupt practice was open for two equally possible meanings, then election petition would not survive. Under such circumstances, by applying doctrine of substantial compliance, it would not be possible to allow such defects to be cured later on and petition had to fail.

59. In Anil Vasudev Salgaonkar's case (supra), it was held failure to assert, whether digging of bore-wells (alleged to be corrupt practice) was with consent of returned candidate, had not been specifically pleaded. Same was

considered as failure to disclose full particulars of material facts which would be fatal to election petition.

60. In Kanimozhi's case (*supra*), observations made were with reference to election affidavit required to be filed by candidate in Form no.26, in context of requirement of maintaining purity of election, highlighting importance of such affidavit. In said matter, challenge to election was on ground of non-compliance with mandatory requirements of Section 33A of ROPA regarding affidavit in Form no.26.

61. In Azhar Hussain's case, it was held though Section 83 does not find a place in Section 86 of ROPA, it does not mean that powers under the CPC cannot be exercised. Referring to decision in case of *Hardwari Lal v. Kanwal Singh* reported in (1972) 1 SCC 214, it was held that there would be no escape from conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of powers under CPC and appropriate orders can be passed, if mandatory requirements enjoined by Section 83 of ROPA regarding statement of material facts in election petition are not complied with.

62. Insofar as requirement of disclosure of source of information, it was held, where neither verification in petition nor affidavit petitioner gives any indication of sources of information as to facts stated in petition which are not to his knowledge and petitioner persists that verification is correct and affidavit in form prescribed does not suffer from any defect allegations of corrupt practices cannot be inquired and tried at all. In such a case, petition has to be rejected on threshold for non-compliance with mandatory provisions of law as to pleadings. It is no part of duty of Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where petition does not disclose any cause of action, it has to be rejected. Court, however, cannot dissect pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of petition.

63. Where several paragraphs of election petition alleging corrupt practices remain unaffirmed under verification clause as well as affidavit, unsworn allegation could have no legal existence and Court could not take cognizance thereof. Defect of type provided in Section 83 of Act on other hand can



be dealt with under doctrine of curability, on principles contained in CPC. Non-compliance with provisions of Section 83 may lead to dismissal of petition if matter falls within scope of Order 6 Rule 16 and Order 7 Rule 11 of CPC.

64. On other hand, main ground for opposing application is that requirement of filing of affidavit as stipulated in Section 83 (1) (c) of ROPA is not mandatory, if there is substantial compliance and that it would be a curable defect, by relying upon decision in Thangjam Arunkumar's case (supra). Said decision referred to Prajwal Revanna's case (supra). It was therefore contended that at stage of consideration of application for rejection of petition under Order VII Rule 11 of CPC, it was not necessary to examine compliance with filing of affidavit in Form no.25.

65. Insofar as disclosure of material facts with full particulars, it is contended that same cannot be read as requiring statement of all facts, but, statement of necessary particulars as would enable returned candidate to understand accrual of complete cause of action with regard to corrupt practice alleged. It was submitted, corrupt practice alleged against returned candidate in instant case is 'bribery' falling

under Section 100 (1) (b) and (d) (ii) of ROPA, by distribution of gift cards to induce voters to vote for returned candidate. It was contended that necessary particulars of meeting i.e., date, time and place, presence of returned candidate and about his instruction for distribution/consent for distribution of gift cards to all voters of constituency were clearly pleaded.

66. It is further submitted, in paragraph no.8, details of date, time and place and person/s who distributed gift cards to each of petitioners, with consent of returned candidate as inducement to vote for him in election scheduled on 10.05.2023 were also pleaded. In fact there is also assertion about registration of FIR against returned candidate and others for offences punishable under Section 123(1) (A) and (B), 127-A of ROPA. It was contended that these particulars would be sufficient to meet requirements of Section 83.

67. In Bhim Rao Baswanth Rao Patil's case (supra), Hon'ble Supreme Court held High Court fell in error in taking note of contentions of parties as well as pleadings, while considering application under Order VII Rule 11 of CPC, as overall statement of facts available on record did not lead to a compelling reason for rejecting election petition. Accordingly,

appellant's application was dismissed, and contentions were kept open to be agitated during trial.

68. A three judges Bench of Hon'ble Supreme Court in Madiraju Venkata Ramana Raju's case (supra); two judges benches in Ajay Arjun Singh's case (supra) and Ashraf Kokkur's cases (supra), after reference to earlier decisions in Azhar Hussain's case (supra), V.S.Achutanandan's cases (supra), Hari Shanker Jain v. Sonia Gandhi, reported in (2001) 8 SCC 233, Samant N. Balkrishna v. George Fernandez, reported in (1969) 3 SCC 238, Syed Dastagir v. T.R. Gopalakrishna Setty, reported in (1999) 6 SCC 337, and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, reported in (2006) 3 SCC 100, Ponnala Lakshmaiah's case (supra), Ram Sukh's case (supra), Virendra Nath Gautham's case (supra), D.Ramachandran's case (supra), held that entire petition has to be read as whole to identify whether it discloses cause of action and if there is substantial compliance, petition cannot be rejected under Order VII rule 11 of CPC.

69. In V.S. Achutanandan's case (supra) three judges Bench of Hon'ble Supreme Court explained distinction between material fact and particulars. It held, material particulars can

be added by way of amendment later on, and Courts would not be justified in dismissing petition at threshold stage on ground of failure to disclose material pleadings.

70. Another three judges Bench of Hon'ble Supreme Court in Subash Desai's case (*supra*) clarified purpose behind Section 83 of ROPA, that it was not only procedural but had an object behind it, namely, that a person need not be called upon to answer an allegation of corrupt practice, precise details of which are not set out properly. It was observed that it would be prejudicial to be called upon to defend vague and reckless charges, which are made without taking responsibility of verifying correctness of. It was observed, before Court proceeds to investigate such allegations, it must be satisfied that material facts with full particulars of corrupt practice are stated and which have been duly supported by affidavit. And assertion that '*contents of paragraphs ... and ... were true to his knowledge*' would be sufficient.

71. Admittedly, corrupt practice alleged to have been committed by returned candidate in instant case is bribery by offering gift card as gratification for inducing electors to vote for returned candidate. As per decision of Hon'ble Supreme

Court in case of Surinder Singh v. Hardial Singh, reported in (1985) 1 SCC 91, *standard of proof* applicable in election petitions would be proof beyond reasonable doubt.

72. As noted above, three judges Bench of Hon'ble Supreme Court in V. Narayanaswamy's case (supra) has held, *cause of action* in an election petition on allegation of corrupt practice, cannot be equated with cause of action as is normally understood, due to consequences that follow. It is held, in case of defective material facts, petition has to be rejected at outset, but in case of failure to plead all material particulars, defect was curable. It is further clarified, where inspite of opportunity to cure defects in providing material particulars, there is failure, petition has to be rejected.

73. It is seen that petitioners herein have opposed application for rejection of petition, by contending that averments in election petition disclose accrual of complete cause of action with sufficient material particulars and it does not suffer from defect. Even from their contention that they are not obliged to disclose material facts with all particulars, but only those, as would be sufficient to indicate accrual of complete cause of action, same stand can be deduced.

74. Even insofar as contention about failure to disclose 'source of information' as a material omission, petitioners contend that verifying affidavit clearly states that petition averments were within personal knowledge. Only, as regards requirement of filing affidavit in prescribed form, they claim liberty to cure defect.

75. Before examining whether there is failure to plead all material facts, it would be appropriate to refer to observations of Hon'ble Supreme Court in Samant N. Balakrishna's case (supra), that under scheme of ROPA, 'corrupt practices' are of two kinds, first - those alleged to be committed by candidate himself or his election agent or any other person with consent of candidate or his election agent and where proof even single such incident would render election void, without any further requirement.

76. While, second kind were those committed by an agent other than election agent, where additional fact that result of election was materially affected due to such corrupt practice would be required to be established. It is not in dispute that allegation against returned candidate in instant case is commission of 'corrupt practice' of first kind.

77. Perusal of election petition would indicate that petition is filed by six electors of Ramanagara Assembly Constituency no.183. In paragraphs no.3 and 4, there are averments about notification issued by Election Commission on 29.03.2023 for holding General Elections to 16<sup>th</sup> Legislative Assembly of Karnataka, with details of calendar of events. In paragraph no.6, details of petitioners' names in electoral rolls are stated. It is also stated that returned candidate herein had contested election on ticket sponsored by Indian National Congress. Thereafter, it is stated that in election results declared on 13.05.2023, respondent herein was returned candidate issued with Form no.21E.

78. As contended, material facts regarding commission of corrupt practice by returned candidate are stated in paragraph no.8. It is stated that on 6<sup>th</sup> May, 7<sup>th</sup> May, and 9<sup>th</sup> May of 2023, returned candidate had convened meeting in Block Congress Office, Ramanagara, wherein it was decided by returned candidate to "print and distribute" "*gift cards*" to all voters of Assembly Constituency no.183. It is specifically averred that returned candidate was personally present and directed all Block Congress Members, supporters and office

bearers to ensure that gift cards reach every single voter. And in pursuance of said direction, *gift cards* were distributed to voters including petitioners.

79. Thereafter, particulars of person who handed over gift cards to each of petitioners with time and place of handing over of gift card are stated. It is stated that Mrs.Roopu wife of Bhadragiri Gowda, Block Congress President, Harohalli – Maralawadi Block handed over gift card to petitioner no.1 at 8:00 a.m. on 10.05.2023 near Government Higher Primary School, Godur Polling Station no.198. Likewise, one Mr.Venkataramana Shetty, a supporter of INC handed over a gift card to petitioner no.2 at his residence on 10.05.2023 at 3:00 a.m. It is also stated that Mr.Mallesha, Bommachanahalli Panchayat Member, handed over gift card to petitioner no.3 in his residence at 2:00 a.m. on 10.05.2023. It is also stated that Mr.Kaggalaiah S/o Maregowda, Ex-Member of Sugganahalli Gram Panchayat, handed over gift card to petitioner no.4 in his residence at 4:00 a.m. on 10.05.2023. It is also stated that Mr.L.Umashankar S/o C.Lingaiah, Class-I Contractor, handed over gift card to petitioner no.5 in his residence at 5:00 a.m. on 10.05.2023. It is also stated that Mr.Siddesh S/o Kariyappa, a



supporter of INC, handed over gift card to petitioner no.6 in his residence at 2:00 a.m. on 10.05.2023.

80. Careful perusal of above averments would indicate that petitioners have indeed pleaded about 'printing and distribution of gift cards' with consent of returned candidate. But, without specific assertion, how said gift card could be considered as '*gratification or reward*', when copy of *gift card* produced, does not bear indication of any value attached to it. They have also not asserted that person while handing over gift card had disclosed to them about such value and mode of encashment of such value to constitute inducement or gratification.

81. While averments regarding handing over of 'gift card' to each of petitioner is stated individually, there is general assertion in last part of paragraph no.8, that they were informed *gift card* would be activated, if they voted for returned candidate. There is further general assertion that after voting, petitioners could go to any shopping centre in Ramanagara District and purchase items worth Rs.5000/-, and therefore *gift card* made them to vote for returned candidate. It is also stated when immediately after voting when petitioners went to

BIGMART SUPER BAZAR, Ramanagara on 10.05.2023 itself, Bar Code in card did not work and they realized that they were falsely induced to vote for returned candidate.

82. It is thereafter stated that instances of corrupt practice committed by respondent and his followers, with consent of returned candidate was admitted by him in press conference explained in detail in paragraph no.9.

83. Such general assertion is without disclosing particulars of who, when and where, informed each of petitioners that *gift card* was associated with monetary or other value which could be considered as *gratification or inducement*. Thus, chain of events for establishing commission of corrupt practice falling under Section 123 (1) (A) (b) of ROPA i.e. offer of inducement to an elector to vote or refrain from voting at an election as a reward, cannot be complete.

84. Keeping in mind that petitioners have alleged inducement or gratification to be pecuniary in nature, it is seen that, there are also no specific assertions that shopping centers in Ramanagara District agreed to be conduits of returned candidate in commission of corrupt practice, which would also be material particular to complete chain of events to establish

commission of corrupt practice by returned candidate. Unless petitioners specifically disclosed name of person who had offered inducement to them, with particulars regarding place, time and date, even claim of admission by returned candidate in subsequent press conference held on 22.05.2023 about distribution of *gift cards* would not complete chain of events for commission of corrupt practice falling under Section 123 (1) (A) (b) (ii) of ROPA i.e. offer of inducement to an elector for having voted or refrained from voting.

85. Later assertion that immediately after voting, they went to shopping center etc. to encash promise of gratification or inducement as informed to them, and found it to be false promise, and further statements that corrupt practice was committed with consent of returned candidate was admitted by him in press conference held on 22.05.2023 at 4:30 p.m. at Congress Office, Ijoor, Ramanagara, in respect of which petitioners have incorporated transcript and translation of entire statements made by returned candidate, would be immaterial.

86. As per settled law, complete cause of action would mean entire chain of events that would connect allegation of

bribery and inducement committed by returned candidate, his election agent or any other person with his consent. It is held in C.P. John v. Babu M. Palissery, reported in (2014) 10 SCC 547, it is held omission to plead even a single material fact would be fatal.

87. In Anil Vasudev Salgaonkar's case (supra), in context of a charge of corrupt practice, it was held "material facts" would mean all basic facts constituting ingredients of particular corrupt practice alleged, which petitioner is bound to substantiate before he can succeed on that charge and if "material facts" were missing even after expiry of period of limitation for filing election petition, pleading becomes deficient. In such context, failure to assert, whether digging of bore-wells (alleged to be corrupt practice) was with consent of returned candidate, which had not been specifically pleaded, was considered as failure to disclose full particulars of material facts and held fatal to election petition.

88. Thus from above, analysis, there is failure to plead how offer of *gift card* acted as inducement or gratification upon petitioners would be a fatal defect. Point (i) is therefore answered in affirmative.

89. Insofar as point (ii), proviso to Section 83 (1) (c) requires election petitioner to file affidavit in support of allegations of corrupt practice in addition to verification of pleadings as required by provisions of CPC. Rule 94A of Rules prescribes form in which affidavit is required to be filed as per above proviso.

90. Same is no more *res integra*, in view of recent decision of Hon'ble Supreme Court in case of Prajwal Revanna's case (supra) referring to Ponnala Lakshmaiah's case (supra), three judges Bench decision in G.M. Siddeshwar's case (supra) and Constitution Bench decision in case of Murarka Radhey Shyam Ram Kumar v/s Roop Singh Rathore, reported in AIR 1964 SC 1545, has held said requirement to be not mandatory and curable. Therefore, point

(ii) is answered in negative.

91. Hence, following:

ORDER

I.A.no.2/2023 filed by returned candidate under Order VII Rule 11 of CPC is allowed.

Consequently, Election Petition is dismissed.

Sd/-  
JUDGE

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE RAVI V HOSMANI

ELECTION PETITION NO. 8 OF 2023 (-)

BETWEEN:

1. MR. GOVINDARAJU, S/O KULLAYYA,  
AGED ABOUT 37 YEARS,  
R/AT NO.8, CHOWVAYANADODDI,  
MARALAVADI, MARIGOODADODDI,  
KANAKAPURA, RAMANAGARA – 562 121,  
(EPIC NO.XZQ2755973)
2. MR. SIDDEGOWDA S., S/O SHIVANEGOWDA,  
AGED ABOUT 66 YEARS,  
R/AT 69-A, HOSATHOKASANDRA,  
GUTTALAHUNASE POST,  
KANAKPURA TALUK, RAMANAGARA – 562 121.  
(EPIC NO.XZQ4196523)
3. MR. MANJUNATH R., S/O RAJANNA,  
AGED ABOUT 28 YEARS,  
R/AT NO.72, HALLIBIDDI,  
DODDASADENAHALLI, R  
RAMANAGARA – 562 121.  
(EPIC NO.XZQ3851862)
4. MR. PUTTARAJU B., S/O LATE BASAVARAJ,  
AGED ABOUT 38 YEARS,  
R/AT NO.94, JAKKASANDRA VILLAGE,  
KANAKPURA TAUKE, RAMANAGARA – 562 121.  
(EPIC NO.XZQ1226653)
5. MR. LOKESHA, S/O NAGEGOWDA,  
AGED ABOUT 46 YEARS,  
R/AT KALLANAKUPPE VILLAGE,  
MARALAVADI HOBLI,  
KALLANAKUPPE, RAMANAGARA – 562 121.  
(EPIC NO.XZQ2668036) .... PETITIONERS

(BY SRI A.V. SRIHARI, ADVOCATE)

AND:

MR. H .A. IQBAL HUSSAIN,  
S/O LATE ABDUL BASHEER SAB,  
AGED ABOUT 62 YEARS,  
R/AT NO.86, HUKUNDA VILLAGE,  
UYYAMBALLI HOBLI,  
KANAKAPURA TALUK,  
RAMANAGARA – 562 119.

... RESPONDENT

(BY SRI C.S. PATIL AND SRI RAVINDRANATH K., ADVOCATES)

THIS ELECTION PETITION IS PRESENTED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, BY SRI GOVINDARAJU AND 4 OTHERS, PETITIONERS-ELECTORS ALONGWITH HIS COUNSEL SRI GIRISH KUMAR B.M., MADHU T.M. (ADVOCATES FOR PETITIONERS) BEFORE THE REGISTRAR (JUDICIAL) ON 26.06.2023 (THE PROCEEDINGS OF REGISTRAR (JUDICIAL) IS AT PAGE NO.1 OF THE PETITION), CHALLENGING THE ELECTION OF RESPONDENT MR. H.A. IQBAL HUSSAIN, FROM 183, RAMANAGARA ASSEMBLY CONSTITUENCY, 2023 TO THE KARNATAKA LEGISLATIVE ASSEMBLY 2023 AND THE PETITIONER PRAYS THIS HON'BLE COURT TO (A) CALL FOR RECORDS. (B) SET ASIDE THE ELECTION OF THE RESPONDENT TO THE 16<sup>TH</sup> KARNATAKA LEGISLATIVE ASSEMBLY FROM NO.183-RAMANAGARA ASSEMBLY CONSTITUENCY, KARNATAKA, LEGISLATIVE ASSEMBLY FOR COMMITTING CORRUPT PRACTICE OF BRIBERY AND ETC.

THIS PETITION, COMING ON FOR ORDERS ON IA, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed seeking for following reliefs:

*A. Call for records;*

*B. Set aside the Election of the Respondent to the 16<sup>th</sup> Karnataka Legislative Assembly From no.183 – Ramanagara Assembly Constituency, Karnataka Legislative Assembly.*

2. In said petition, respondent (hereinafter referred to as 'returned candidate') has filed I.A.no.2/2023 under Order VII Rule 11 (a) to (d) of Code of Civil Procedure, 1908 ('CPC' for

short) for rejection of petition as devoid of cause of action, failure to comply with mandatory requirements in terms of Section 81 and untenable in terms of Section 100 of Representation of People Act, 1951 ('ROPA' for short).

3. Learned counsel for respondent submitted that he had contested election for being elected 'Member of Legislative Assembly of Karnataka' from Ramanagara Constituency in election held on 10.05.2023 and was declared on 13.05.2023 as returned candidate. It was submitted, on ground that above petition was frivolous apart from being non-compliant with mandatory requirements of ROPA. Therefore, respondent had filed I.A.no.2/2023 for rejection of petition.

4. It was submitted that Section 83 of ROPA prescribes contents of election petition filed under Section 80 of ROPA as follows:

*"83. Contents of petition.—*

*(1) An election petition—*

- (a) shall contain a concise statement of the material facts on which the petitioner relies;*
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*



*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.*

*(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

5. As per Section 83 (1) (a), petition is required to disclose concise statement of material facts on which petitioner relies, while clause (b) requires it to set forth full particulars of any corrupt practice that petitioner alleges including names of persons involved as well as date and place of commission of each such corrupt practice. Proviso to sub-section (1) mandates petitioner filing an affidavit in prescribed form in support of allegation of corrupt practice with particulars thereof. It was submitted, above requirements were mandatory and failure to comply would render petition untenable and liable for rejection

6. Learned counsel further submitted that Section 100 of ROPA provided limited grounds on which election of a candidate could be declared void. It was submitted, in case of corrupt practice, Section 100 (1) (b) provided that election could be declared void only on finding that such corrupt

practice was committed with consent of returned candidate or his election agent, while sub-section (2) provided that if such corrupt practice was committed contrary to orders or without consent of candidate or his election agent or that such candidate had taken reasonable care for preventing commission of corrupt practices, election could not be declared void.

7. It was submitted that corrupt practice for purposes of ROPA was defined in Section 123 of ROPA as follows:

*"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—*

*(1) "Bribery", that is to say—*

*(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—*

*(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or*

*(b) an elector to vote or refrain from voting at an election, or as a reward to—*

*(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or*

*(ii) an elector for having voted or refrained from voting;*

*(B) ....."*

*Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78.*

*(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:"*

8. It was submitted, perusal of present petition filed by common voters did not disclose a clear case of corrupt practice committed by respondent or his election agent with his consent as defined by Section 123 to substantiate grounds for declaring election void provided in Section 100 and therefore, petition was liable to be rejected at threshold. It was submitted, in order to make out case of commission of corrupt practice, petitioners were required not only to state material facts on which they relied, but also disclose full particulars of corrupt practice with names, date and place.

9. It was submitted petitioners - common voters had sought to substantiate allegation of corrupt practice against respondent by stating that corrupt practice was as per his instructions, by referring to a meeting alleged to be held at Block Congress Office, but they have not disclosed source of information, whether personal or person from whom they had got information as 'source of information' itself would be a 'material particular' as per requirements of Section 83 read

with Sections 100 and 123 of ROPA. It was submitted even particulars of persons who had attended such meeting etc., are also not pleaded which would be a fatal flaw.

10. It was submitted, though copy of guarantee card was enclosed to petition, same would not have evidentiary value for present purposes in absence of particulars about date of issue, person who issued it, validity and whether it was issued either by or at behest of respondent. Admittedly, no complaint has been filed against respondent or his election agent either before Chief Election Officer or jurisdictional police station.

11. It was further submitted, election petition was also defective on ground that it was not accompanied by affidavit in form prescribed under Rule 94A of the Conduct of Election Rules, 1961 (hereinafter referred to as 'Rules'). It was submitted, requirement of filing affidavit in form 25 was required as per Rule 94A. It was submitted, form of affidavit required deponent to disclose source of information, whether personal knowledge or otherwise. Since, affidavit failed to clarify source of information, affidavit filed did not confirm

requirement, which had to be viewed as material and fatal flaw. Consequently election petition was liable to be dismissed.

12. It was further submitted that Section 127-A of ROPA requires name and address of printers and publisher thereof on every election pamphlet or poster. It was submitted, copy of guarantee card sought to be relied upon by petitioners does not comply with said requirement. Mere presence of photograph of respondent and party symbol would not substantiate that it was published and distributed either with consent or as per instructions of respondent. Moreover, there is no action initiated against anyone for violation of Section 127-A of ROPA. Therefore, said document did not have evidentiary value. Consequently, when entire allegation of corrupt practice alleged against respondent in election petition is based on guarantee card, it would be futile to permit election petition to proceed to be put to trial. Hence, election petition was liable to be dismissed.

13. It was further submitted unlike assertion in petition, copy of only one gift card is produced. Non-production of gift

cards issued to all petitioners would be fatal as gift cards is fundamental basis of their petition.

14. In support of his submissions, learned counsel sought to rely on observations of Hon'ble Supreme Court in case of Samant N. Balkrishna v. George Fernandez, reported in (1969) 3 SCC 238, in following paragraphs:

*"25. Pausing here, we may view a little more closely the provisions bearing upon corrupt practices in Section 100. There are many kinds of corrupt practices. They are defined in Section 123 of the Act and we shall come to them later. But the corrupt practices are viewed separately according as to who commits them. The first class consists of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established, avoid the election without any further condition being fulfilled. Then there is the corrupt practice committed by an agent other than an election agent. Here an additional fact has to be proved that the result of the election was materially affected. We may attempt to put the same matter in easily understandable language. The petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent, in which case he need not establish what the result of the election would have been without the corrupt practice. The expression "Any other person" in this part will include an agent other than an election agent. This is clear from a special provision later in the section about an agent other than an election agent. The law then is this: If the petitioner does not prove a corrupt practice by the candidate or his election agent or another person with the consent of the returned candidate or his election agent but relies on a corrupt agent, he must additionally prove how the corrupt practice affected the result of the poll. Unless he proves the consent to the commission of the corrupt practice on the part of the candidate or his election agent he must face this additional burden. The definition of agent in this context is to be taken from Section 123 (Explanation) where it is provided that an agent "includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate." In this*

*explanation the mention of "an election agent" would appear to be unnecessary because an election agent is the alter ego of the candidate in the scheme of the Act and his acts are the acts of the candidate, consent or no consent on the part of the candidate.*

*29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact*

*must be co-related to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although the penalty of dismissal is taken away. Sub-section (5) of that section provides:*

*"(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."*

*The power of amendment is given in respect of particulars but there is a prohibition against an amendment "which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition." One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contract in the language of the two parts. The first part is enabling and the second part creates a positive bar. Therefore, if a corrupt practice is not alleged, the particulars cannot be supplied. There is, however, a difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances,*



*other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the scheme of election law there are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate is quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action.*

*30. Since a single corrupt practice committed by the candidate, by his election agent or by another person with the consent of the candidate or his election agent is fatal to the election, the case must be specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice cannot be supplied later on. The bar of the latter part of the fifth sub-section to Section 86 then operates. In the petition as originally filed the agency of Jagadguru Shankaracharya, Mr Madhu Limaye and the Maratha (or Mr.Atrey) was the basis of the charge and the candidate Mr.Fernandez was left out. No allegation was personally made against him. The only allegations against him personally were contained in para 2-G. There it was said that Mr.Fernandez had made certain speeches to the effect that Mr.Patil was against the Muslims and Christians. No evidence was led and they were not even referred to at the hearing before us. The next reference in 2-J is to statements of Mr.Fernandez and published by the Maratha. These were specified and only three such statements were included. Since the gist of the election offence is the publication of false statements, the charge is brought home to the candidate through the publication by the Maratha. It is to be remembered that even the allegation that in doing so the Maratha acted as the agent of Mr.Fernandez, itself came by way of an amendment which we allowed as it completed the cause of action and is permissible. The bar of Section 86(5) (latter part) does not apply to it and under Order 6 Rule 17 of the Code of Civil Procedure which is applicable as far as may be, such an amendment can be made. Similarly the allegations that such statements were false or were believed to be false or were not believed to be true by the Maratha (i.e., Mr.Atrey) and that they were calculated to prejudice Mr.Patil's chances and did so, were allowed by us to be added as completing the cause of action relating to a*

*corrupt practice already alleged. But we declined to allow to stand the amendments which had the effect of introducing new corrupt practices relating to the candidate himself which had not been earlier pleaded. This kind of amendment is prohibited under the law when the amendment is sought after the period of limitation.*

*37. From our examination of all the cases that were cited before us we are satisfied that an election petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated. It is obvious that merely repeating the words of the statute does not amount to a proper statement of facts and the section requires that material facts of corrupt practices must be stated. If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later, but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition.*

*45. Mr Jethamalani contended in further support that there was a clear similarity in the statements and utterances of Mr Fernandez and Mr Atrey. He inferred a high probability of concert between them. In this connection he referred in particular to the speech of Mr Fernandez at Shivaji Park and the conduct of Shanbhag, one of his workers, in following up what Mr Fernandez had said. We shall refer to this last part later, on which a considerable part of the time of the Court was spent, although we had ruled out the amendment with regard to the speech at Shivaji Park. Mr Jethamalani referred to the following cases among others in support of his contention that consent in such circumstances may be assumed: Nani Gopal Swami v. Abdul Hamid Chaudhary [1959 Ass 200]. Adams v. Hon. F.F. Leveson Gower [1 O'Malley and Hardcastls 218]; Christie v. Grieve and W.F. Spencer [1 O'Malley and Hardcastls 251] ; John Blundell v. Charles Harrison [3 O'Malley and Hardcaitis 148] . There is no doubt that consent need not be directly proved and a consistent course of conduct in the canvass of the candidate may raise a presumption of consent. But there are cases and cases. Even if all this is accepted we are of opinion that consent cannot be inferred. The evidence proves only that Mr Atrey was a supporter and that perhaps established agency of Mr Atrey. It may be that evidence is to be found supporting the fact, that Mr Atrey acted as agent of Mr Fernandez with his consent. That however, does not trouble us because Mr Chari admitted that Mr Atrey can be treated as an agent of Mr Fernandez.*

*It is however, a very wide jump from this to say that Mr Fernandez had consented to each publication as it came or even generally consented to the publication of items defaming the character and conduct of Mr Patil. That consent must be specific. If the matter was left entirely in the hands of Mr Atrey who acted solely as agent of Mr Fernandez, something might be said as was done in Rama Krishna case by this Court. Otherwise there must be some reasonable evidence from which an inference can be made of the meeting of the minds as to these publications or at least a tacit approval of the general conduct of the agent. If we were not to keep this distinction in mind there would be no difference between Section 100(1)(b) and 100(1)(d) insofar as an agent is concerned. We have shown above that a corrupt act per se is enough under Section 100(1)(b) while under Section 100(1)(d) the act must directly affect the result of the election insofar as the returned candidate is concerned. Section 100(1)(b) makes no mention of an agent while Section 100(1)(d) specifically does. There must be some reason why this is so. The reason is that an agent cannot make the candidate responsible unless the candidate has consented or the act of the agent has materially affected the election of the returned candidate. In the case of any person (and he may be an agent) if he does the act with the consent of the returned candidate there is no need to prove the consent of the returned candidate and there is no need to prove the effect on the election. Therefore, either Mr Jethamalani must prove that there was consent and that would mean a reasonable inference from facts that Mr Fernandez consented to the acts of Mr Atrey or he must prove that the result of the election was seriously affected. If every act of an agent must be presumed to be with the consent of the candidate there would be no room for application of the extra condition laid down by Section 100(1)(d), because whenever agency is proved either directly or circumstantially, the finding about consent under Section 100(1)(d) will have to follow. We are clearly of opinion that Mr Jethamalani's argument that Section 100(1)(b) applies can only succeed if he establishes consent on the part of Mr Fernandez.*

*47. The meeting at Shivaji Park about which we shall say something presently, was not held in Mr Fernandez's constituency. The similarity of ideas or even of words cannot be pressed into service to show consent. There was a stated policy of Sampurna Maharashtra Samiti which wanted to join in Maharashtra all the areas which had not so far been joined and statements in that behalf must have been made not only by Mr Atrey but by several other persons. Since Mr Atrey was not appointed as agent we*

cannot go by the similarity of language alone. It is also very significant that not a single speech of Mr Fernandez was relied upon and only one speech of Mr Fernandez namely, that at Shivaji Park was brought into arguments before us by an amendment which we disallowed. The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced. The "Maratha" was an independent newspaper not under the control of the Sampurna Maharashtra Samiti or the S.S.P. which was sponsoring Mr Fernandez or Mr Fernandez himself. Further we have ruled out news items which it is the function of the newspaper to publish. A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. In the present case the only attempt to prove a speech of Mr Fernandez was made in connection with the Shivaji Park meeting. Similarly the editorials state the policy of the newspaper and its comment upon the events. Many of the news items were published in other papers also. For example Free Press Journal, the Blitz and writers like Welles Hengens had also published similar statements. If they could not be regarded as agents of Mr Fernandez we do not see any reason to hold that the "Maratha" or Mr Atrey can safely be regarded as agent of Mr Fernandez when acting for the newspaper so as to prove his consent to the publication of the defamatory matter. We are therefore of opinion that consent cannot reasonably be inferred to the publications in the "Maratha". We are supported in our approach to the problem by a large body of case law to which our attention was drawn by Mr Chari. We may refer to a few cases here : Bishwanath Upadhaya v. Hardal Das [1958 Ass 97] ; Abdul Majeed v. Bhargavan (Krishnan) [AIR 1963 Ker 18] ; Rustom Satin v. Dr Sampooranand [20 ELR 221] ; Sarla Devi Pathak v. Birendra Singh [20 ELR 275] ; Krishna Kumar v. Krishna Gopal [AIR 1964 Raj 21] ; Lalsing Kesbrising Sehvar v. Vallabhdas Shankarlal Phekdi [AIR 1967 Guj 62] ; Badri Narain Singh v. Kamdeo Prasad Singh [AIR 1951 Pat 41] and Sarat Chandra Rabba v. Khagendranath Math [AIR 1961 SC 334] . It is not necessary to refer to these cases in detail except to point out that the Rajasthan case dissents from the case from Assam on which Mr Jethamalani relied. The principle of law is settled that consent may be inferred from

circumstantial evidence but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although the trial of an election petition is made in accordance with the Code of Civil Procedure, it has been laid down that a corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent. Since we have held that Mr. Atrey's activities must be viewed in two compartments, one connected with Mr. Fernandez and the other connected with the newspaper we have to find out whether there is an irresistible inference of guilt on the part of Mr. Fernandez. Some of the English cases cited by Mr. Jethamalani are not a safeguard because in England a distinction is made between "illegal practices" and "corrupt practices". Cases dealing with "illegal practices" in which the candidate is held responsible for the acts of his agent are not a proper guide. It is to be noticed that making of a false statement is regarded as "corrupt practice" and not an "illegal practice" and the tests are different for a corrupt practice. In India all corrupt practices stand on the same footing. The only difference made is that when consent is proved on the part of the candidate or his election agent to the commission of corrupt practice, that itself is sufficient. When a corrupt practice is committed by an agent and there is no such consent then the petitioner must go further and prove that the result of the election insofar as the returned candidate is concerned was materially affected. In *Bayley v. Edmunds*, *Byron* and *Marshall* [(1894) 11 TLR 537] strongly relied upon by Mr. Daphtary, the publication in the newspaper was not held to be a corrupt practice but the paragraph taken from a newspaper and printed as a leaflet was held to be a corrupt practice. That is not the case here. Mr. Patil's own attitude during the election and after is significant. During the election he did not once protest that Mr. Fernandez charged his workers with hooliganism. Even after the election Mr. Patil did not attribute anything to Mr. Fernandez. He even said that the Bombay election was conducted with propriety. Even at the filing of the election petition he did not think of Mr. Fernandez but concentrated on the "Maratha".

50. Now it may be stated that mere knowledge is not enough. Consent cannot be inferred from knowledge alone. Mr. Jethamalani relied upon the *Taunton* case [1 *O'Malley and Hardcastle* 181 at 185] where *Blackburn, J.*, said that one must see how much was being done for the candidate and the candidate then must take the good with the bad. There is difficulty in accepting this contention. Formerly the

*Indian Election Law mentioned "knowledge and connivance" but now it insists on consent. Since reference to the earlier phrase has been dropped it is reasonable to think that the law requires some concrete proof, direct or circumstantial of consent, and not merely of knowledge and connivance. It is significant that the drafters of the election petition use the phrase "knowledge and connivance" and it is reasonable to think that they consulted the old Act and moulded the case round "knowledge and connivance" and thought that was sufficient."*

15. Likewise on observations in case of

V. Narayanaswamy v. C.P. Thirunavukkarasu, reported in

(2000) 2 SCC 294, in following paragraphs:

*"23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be*

*true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.*

*26. Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood*

*because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter; if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years.*

*Reference in this connection may be made to Section 8-A [-A. Disqualification on ground of corrupt practices.—*

*(1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:*

*Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect.*

*(2) Any person who stands disqualified under Section 8-A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.”] of the Act. It was for this purpose that the proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961 (w.e.f. 20-9-1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the rules.*

*27. It is contended by Mr.Bhandare that all the material facts have been stated in the election petition and that for lack of material particulars, the petition could not have been thrown out at the threshold. He said opportunity should have been given to the appellant to supply the*



*material particulars. It is really a strange proposition to advance. Till the date of the impugned judgment, the appellant had persisted that the petition did not lack material particulars and that the verification was in accordance with the Code and the affidavit in support of the corrupt practice in the form prescribed. Admittedly, the petition lacked material particulars, the verification to the petition was not in accordance with the Code and the affidavit did not conform to the form prescribed. At the first opportunity, the respondent raised objection that the petition lacked both material facts and the material particulars and that the verification to the petition and the affidavit were not in accordance with law. This was repeated in the miscellaneous application (Original Application No. 298 of 1998). In the counter-affidavit and in the reply to the miscellaneous application, the appellant persisted in his stand and termed the objections raised by the respondent as irrelevant. It is not that the appellant did not have the opportunity to correct his mistake which he could have easily done in the rejoinder filed by him to the counter-affidavit of the respondent or even his reply to the miscellaneous application (OA No. 298 of 1998). He had every opportunity even at that stage to supply the material particulars which admittedly were lacking and also to amend the verification and to file the affidavit in the form prescribed but for reasons best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the court has jurisdiction to dismiss the petition. The High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct suo motu the furnishing of better particulars and requiring amendment of the petition for the purpose of verification and filing of proper affidavit. In a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. (See in this connection the Constitution Bench decision in Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani [AIR 1955 SC 610: (1955) 2 SCR 428] SCR at p. 144.)*

*28. The grievance of the appellant is that he wanted to meet the MLAs other than the MLAs of the Congress Party to which he belonged but those MLAs were kept first in Hotel Ashoka at Pondicherry and then taken to five star hotels at Mahabalipuram. The appellant alleged that the*

MLAs were "kept" in Hotel Ashoka but he has not given particulars as to what he meant by the word "kept". "Kept" is certainly not "confined". What entertainment was provided to those MLAs in Hotel Ashoka, Pondicherry or in five star hotels in Mahabalipuram has also not been specified. It is not his case that he was prevented in any way from meeting any of those MLAs. It was a material fact to allege which he failed to do so. This is apart from the fact that the material particulars as to when the MLAs were taken to Hotel Ashoka and to other places, the names of the MLAs and the names of the hotels in Mahabalipuram, who took them there, who paid their bills and who brought them back are lacking. The appellant does not show as to why he could not meet all those MLAs on 2-10-1997. Apart from one independent MLA the other MLAs belonged to various other political parties like DMK, TMC, CPI, PMK and the Janata Dal. Rather it can be assumed that the MLAs voted according to their political affiliations. It has come on record that out of a total number of 29 MLAs who constituted the Legislative Assembly of Pondicherry, two belonged to AIDMK, another political party. AIDMK had taken the decision not to vote for any candidate and that is how the two MLAs of this party did not participate in the election and the total votes polled were 27. There was only one independent MLA and his casting of vote either way would not have at all affected the result of the election considering the number of votes polled by each of the candidates. It is not the case of the appellant that he was barred from meeting any of the MLAs in order to solicit their votes. There is no allegation if there is any complaint by any MLA that he was kept out of circulation by the respondent or with his consent by any other person for the purpose of not being accessible to the appellant.

29. The appellant in his petition said that C. Jayakumar, Minister and K. Kandaswamy, Deputy Speaker and K. Rajasekheran, Parliamentary Secretary to the Chief Minister, were the agents of the respondent. He then alleged that C. Jayakumar took Kandaswamy and Rajasekheran to Goa with a view to influence them to get their votes in favour of the respondent. Is it not paradoxical where one agent influences the other agent to vote in a particular way? It certainly could not be a corrupt practice. The appellant then alleged that N. Keshavan, MLA belonging to DMK and also a government whip kept independent MLA Rajaraman first in Hotel Ashoka, Pondicherry and then took him to Kovalam, Chengleput District, then to Tirupati in a government vehicle and then brought back to Pondicherry on 2-10-1997. It is not the case of the appellant that N. Keshavan did so with the consent of the respondent or any of his agents or

*otherwise. This is a material fact which the appellant failed to allege. Lastly, notification regarding appointments of Chairmen to various committees came out much later after the results were declared. It is correct that none of the nominees belonged to the Congress Party.*

*30. It will thus be seen that the election petition not only lacked the material facts, it lacked material particulars, defective verification and the affidavit filed was not in the form prescribed. Moreover, the ingredients of corrupt practices, as defined in Section 123(1)(B) and 123(2) of the Act are also lacking. It is also not the case of the appellant that any MLA whom the appellant could not meet, received any gratification, as defined, whether as a motive or a reward for voting or refraining from voting, or there was any inducement or attempt to induce any such MLA to vote or refrain from voting. Also it is not the case of the appellant that any undue influence was exercised with the free exercise of any electoral right of any MLA which right, as noted above, has been defined in clause (d) of Section 79 of the Act. There is no allegation if any particular MLA was induced to vote or not to vote in a particular way because he was entertained or otherwise. The allegation is that the appellant himself could not meet the MLAs and he believed that if he had been given a chance to meet them he would have influenced their vote in his favour and against their party of affiliations. There is no allegation that the MLAs were prevented or influenced from freely exercising their electoral right. As stated earlier the appellant did not show as to why he could not meet the MLAs on 2-10-1997 when they were available in Pondicherry. The material fact must be that the appellant was prevented from meeting the MLAs which he did not allege and as to how he was so prevented would constitute material particulars."*

16. Likewise on observations in case of Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar, reported in (2009) 9 SCC 310, in following paragraphs:

*"6. It was also incorporated in the written statement that the election petition does not set forth the material facts of the alleged corrupt practice. The respondent herein has also failed to disclose the names of the parties alleged to have committed the corrupt practice. In the election petition, the date and place of the commission of such*

*alleged corrupt practice has not been mentioned and, therefore, the election petition deserved to be dismissed as not maintainable.*

*17. The High Court has totally misdirected itself by misconstruing the ratio laid down in a catena of decisions pronounced by this Court including the law laid down in Azhar Hussain case [1986 Supp SCC 315] and H.D. Revanna case [(1999) 2 SCC 217] which if properly applied to the facts and circumstances of the present case would lead to rejection of the election petition in limine.*

*19. In the election petition the respondent has mentioned that there was scarcity of water supply in certain villages. However, the respondent has failed to mention the number of houses which face such alleged water scarcity. In the written statement, the appellant also alleged that the respondent in the election petition has also failed to mention about water availability in these villages; the respondent has further failed to mention as to since when has there been water scarcity? The appellant in the written statement further alleged that the respondent has also not mentioned as to how many houses are there in these villages; how many persons are living in each of the houses; and how many persons are voters in these villages. The respondent has also not mentioned as to how many villages have water connections; and when and where the water scarcity had been noticed in these villages. He has also not mentioned as to when this complete breakdown or insufficient water supply had occasioned to these villages nor has he mentioned the date, time, place or any other details of such breakdown and has generally failed to give the details as required under Section 83 of the Act.*

*22. Similarly, the respondent failed to give particulars regarding the bore wells whose cost as alleged amounts to Rs.6,38,557. Similarly, expenditure of Rs.12,50,000 has been alleged to have been made for the purchase of ambulances. The particulars have not been provided. It is not clear as to how the respondent has come to the figure of Rs.5,00,000 which according to him has been spent by the appellant. He did not give any particulars regarding either of the bore wells or the ambulances.*

*23. The appellant denied crossing the limit of Rs.5,00,000 as prescribed under the Act and the Rules framed thereunder. It is also alleged that the appellant did not construct any bore wells nor did he provide any ambulances to the villagers and, therefore, the question of showing the same in the election expenses did not arise at*

*all. The appellant denied that an amount of Rs.6,38,557 and an amount of Rs.12,50,000 as alleged has been the expenditure factually incurred by the appellant and denied having committed any corrupt practice. The question of the election results being materially affected does not arise at all and, therefore, the election petition is liable to be dismissed.*

*24. It was specifically argued that the election petition is liable to be dismissed because there has been non-compliance with Section 83(1) of the Act because there was no sufficiency and adequacy of pleadings in the election petition.*

*25. Section 83(1) of the Act reads as under:*

*"83. Contents of petition.—(1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."*

*27. In the impugned judgment, the High Court erroneously concluded that the election petition when read as a whole discloses that it has material facts stated and regarding which triable issues are also framed and therefore, it cannot be rejected at the preliminary stage. The High Court in the impugned judgment has discussed the decision of this Court in Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93]. According to the appellant, the High Court erroneously distinguished this case. The impugned judgment of the High Court is neither in consonance with the provisions of the Act nor according to the settled legal position as has been crystallised in a number of cases by this Court. Being aggrieved by the impugned judgment, the appellant has preferred this appeal.*

28. In this election petition, Respondent 1 has challenged the appellant's election primarily on the ground of corrupt practices, alleging that the appellant dug bore wells in the constituency and provided ambulances after the election notification was issued in order to lure the voters from the constituency or induce them to vote for the appellant.

41. This controversy is no long *res integra*. More than a century ago, in *Phillips v. Phillips* [(1878) 4 QBD 127: 48 LJQB 135 (CA)], Cotton, L.J. stated: (QBD p. 139)

"... What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

47. The question of material facts in the election petition was comprehensively dealt with by this Court in *Azhar Hussain case*, 1986 Supp SCC 315. The Court observed that it is not disputed that the Code of Civil Procedure applies to the trial of an election petition by virtue of Section 87 of the Representation of the People Act, 1951. Section 87(1) and Section 87(2) of the Act apply to the election petition.

49. In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) of the Code. These provisions are set out as under:

"16. Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.

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11. Rejection of plaint.—The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;"

50. *The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.*

51. *This Court in Samant N. Balkrishna case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

52. *In V.Narayanaswamy v. C.P. Thirunavukkarasu, (2000) 2 SCC 294, this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666] this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under: (SCC p. 677, para 11)*

*"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election*

*petition, the absence of material particulars can be cured at a later stage by an appropriate amendment."*

53. In *Udhav Singh case* (1977) 1 SCC 511 this Court observed as under: (SCC pp. 522-23, para 41)

*"41. Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."*

*(emphasis in original)*

54. In *H.D. Revanna case* (1999) 2 SCC 217, the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In *Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi*, (2005) 5 SCC 46, this Court observed thus: (SCC p. 51, para 14)

*"14. Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Code of Civil Procedure, 1908 and if such plea be the*



*sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11, Order 7 of the Code."*

*55. In Harkirat Singh v. Amrinder Singh [(2005) 13 SCC 511] this Court again reiterated the distinction between "material facts" and "material particulars" and observed as under: (SCC p. 527, paras 51-52)*

*"51. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*52. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."*

*56. In Sudarsha Avasthi v. Shiv Pal Singh [(2008) 7 SCC 604] this Court observed as under: (SCC p. 612, para 20)*

*"20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose."*

*57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.*

58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in *Harkirat Singh* case [(2005) 13 SCC 511] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)

48. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

59. In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (the respondent herein) is bound to substantiate before he can succeed on that charge. It is also well settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient.

60. According to the appellant, in the election petition, there was no averment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election petitioner (the respondent herein) and the election petition is liable to be summarily dismissed on that ground.

*61. The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.*

*62. When we apply the aforementioned test to the election petition in this case, then the conclusion becomes irresistible that the election petition lacks the materials facts. The election petition read as a whole does not disclose any cause of action."*

17. And following observations in case of Kanimozhi Karunanidhi v. A. Santhana Kumar, reported in 2023 SCC OnLine SC 573:

*"16. In the instant case, the respondent-election petitioner has challenged the election of the appellant on the ground that the result of the election, insofar as it concerned the appellant, was materially affected by non-compliance with Article 324 of the Constitution and by non-compliance with Rule-4A of the said Rules read with Section 33 of the Act. It may be noted that Section 33 of the Act pertains to the presentation of nomination paper and the requirements for a valid nomination. Section 36 pertains to the scrutiny of nominations by the Returning Officer.*

*Sub-section (2) thereof empowers the Returning Officer, either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned therein. One of the grounds to reject the nomination is, when there has been failure to comply with any of the provisions of Section 33. Sub-section(4) of Section 36 states that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.*

*17. Part-II of the Conduct of Election Rules, 1961 deals with the General Provisions. Rule-4 and Rule-4A which pertain to the submission of nomination paper and the Form of affidavit to be filed at the time of delivering nomination paper read as under:—*

*"4. Nomination paper- Every nomination paper presented under sub-section (i) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:*

*Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.*

*4A. Form of affidavit to be filed at the time of delivering nomination paper- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."*

*Legal position:*

*18. The scheme of the Constitutional and statutory provisions contained in the R.P. Act in relation to the nature of the right to elect, the right to be elected and the right to dispute an election have been explained and interpreted by various Constitutional Benches since 1952. To cite a few are N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, in Jagan Nath v. Jaswant Singh, in Bhikji Keshao Joshi v. Brijlal Nandlal Biyani, in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore etc.*

*19. What has been gleaned from the said authorities may be summed up by stating that a right to elect, though fundamental it is to democracy, is neither a fundamental right nor a common law right. It is purely a statutory right. Similarly, right to be elected and the right to dispute an election are also statutory rights. Since they are statutory creations, they are subject to statutory limitations. An Election petition is not an action at common law, nor in equity. It is a special jurisdiction to be exercised in accordance with the statute creating it. The concept familiar to common law and equity must remain strangers to election law unless statutorily embodied. Thus, the entire election process commencing from the issuance from the notification calling upon a constituency to elect a member or members right upto the final resolution of the dispute, concerning the election is regulated by the Representation of People Act, 1951. The said R.P. Act therefore has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election dispute.*

*20. In a very interesting and important decision in case of Union of India v. Association for Democratic Reforms, a three-judge Bench of this Court raising a question - in a nation wedded to republican and democratic form of government, whether before casting votes, the voters have a right to know relevant particulars of their candidates contesting election to the Parliament or to the legislature of States, deliberated on the powers of the Election Commission under Article 324 of the Constitution, and observed as under:—*

*"46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:*

*1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.*

*2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar case [(1985) 4 SCC 628] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.*

*3. ....*

*4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the*

*process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted."*

*21. It is also pertinent to note that the insertion of Rule-4A and Form-26 appended to the said Rules is also culmination of the said observations made this Court in the aforesaid case, which require the candidate to disclose the information and particulars in the form of affidavit to be submitted along with the nomination paper.*

*22. The respondent-Election petitioner in this case has challenged election of the appellant-retuned candidate under Section 100(1)(d)(iv) on the ground of non-compliance of the said Rule-4A and the Form-26. However, the appellant had filed the applications seeking dismissal of the Election petition in limine, for the non-compliance of the provisions of Section 83(1)(a) of the said Act, read with Order VII, Rule 11 of CPC.*

*23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely - "an Election petition must contain a concise statement of material facts on which the petitioner relies", is that such non-compliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. "Material facts" are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure 1908. Material facts would include positive statement of facts as also positive statement of a negative fact.*

*24. A Three-Judge Bench in Hari Shanker Jain v. Sonia Gandhi (supra) had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the Election petition holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of*

*Order VII Rule 11 CPC. It was observed in para 23 and 24 as under:—*

*"23. Section 83 (1) (a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Civil Procedure Code, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603], Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433].) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.*

*24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."*

25. In case of *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu*, a Three-Judge Bench of this Court again had an occasion to deal with the issues as to what would constitute "material facts" and what would be the consequences of not stating the "material facts" in the Election petition, as contemplated in Section 83(1)(a) of the RP Act, and the Court observed as under:

"6. Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."

26. In *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, this Court has discussed number of earlier decisions on the issue as to when the Election petition could be dismissed summarily if it does not furnish the cause of action in exercise of powers under the Code of Civil Procedure read with Section 83 of the R.P. Act.

"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause



*of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.*

*51. This Court in Samant N. Balkrishna case [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

*52. In V. Narayanaswamy v. C.P. Thirunavukkarasu (2000) 2 SCC 294 this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In L.R. Shivaramagowda v. T.M. Chandrashekar (1999) 1 SCC 666 this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under : (SCC p. 677, para 11)*

*"11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment."*

53. In *Udhav Singh* case [(1977) 1 SCC 511] this Court observed as under: (SCC pp. 522-23, para 41)

"41. Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

54. In *H.D. Revanna* case [(1999) 2 SCC 217] the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In *Harmohinder Singh Pradhan v. Ranjeet Singh Talwandi* [(2005) 5 SCC 46] this Court observed thus : (SCC p. 51, para 14)

"14. Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Civil Procedure Code, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11, Order 7 of the Code."

55. In *Harkirat Singh v. Amrinder Singh* [(2005) 13 SCC 511] this Court again reiterated the distinction between

*"material facts" and "material particulars" and observed as under : (SCC p. 527, paras 51-52)*

*"51. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*52. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."*

*56. In Sudarsha Avasthi v. Shiv Pal Singh [(2008) 7 SCC 604] this Court observed as under : (SCC p. 612, para 20)*

*"20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose."*

*57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.*

*58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are*

*material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under : (SCC pp. 526-27)*

*"48. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."*

*27. In Ram Sukh v. Dinesh Aggarwal (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold. The Court observed in para 14 to 21 as under:—*

*"14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:*

*(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;*

*(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;*

*(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;*

*(iv) material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and*

*(v.) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.*

*15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.*

*16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus : (SCC pp. 631-32, para 50)*

*"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim*

*are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."*

*17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:*

*(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and*

*(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.*

*In our opinion, both the contentions are misconceived and untenable.*

*18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.*

*19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea*

*was negated by a three-Judge Bench of this Court in Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said : (SCC p. 221, para 23)*

*"23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."*

*20. The issue was again dealt with by this Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315]. Referring to earlier pronouncements of this Court in Samant N. Balkrishna [(1969) 3 SCC 238] and Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in Azhar Hussain case [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.*

*21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:*

*"100. Grounds for declaring election to be void.—*

*(1) Subject to the provisions of sub-section*

*(2) if the High Court is of opinion—*

*\*\*\**

*(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—*

\*\*\*

*(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."*

*It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected."*

*28. The legal position enunciated in afore-stated cases may be summed up as under:—*

*i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.*

*ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.*

*iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.*

*iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.*

*v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given*



*to a person who uses it as a handle for vexatious purpose.*

*vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.*

*Conclusion:*

*29. In the light of the afore-stated legal position, let us see whether the respondent/election petitioner had complied with the requirements of Section 83(1)(a) of the RP Act, by stating "material facts" in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the Appellant-retuned candidate to be void. The bone of contention raised by the learned counsel appearing for the respondent-election petitioner is that the Election Commission of India had called for the information prescribing the Form 26 in regard to status of filing of income tax return of candidates and their family members by exercising powers under Article 324 of the Constitution of India and in that the petitioner had provided information that her spouse was working as consultant at foreign country and earning salary against the column No. 8, Serial No. 9(b) and 9A(b), respectively under Part A of Form 26. Besides, she had mentioned "No" to the query regarding Income tax dues of her spouse, (mentioned as "Ethumilai" in Tamil language). She had further stated that her spouse had bank accounts in Singapore with deposit of dollars against column No. 7 Serial No. (ii) of column in Part A of Form 26 but had failed to disclose the status of filing income tax return of her spouse in the foreign country. He therefore submitted that these material facts which have already been stated in the Election petition, were sufficient to constitute cause of action for filing Election petition under Section 100(1)(d)(iv) of the RP Act.*

*Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by*

*him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.*

*32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d)(iv) of the said Act, then also there are no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the RP Act.*

*33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition*

*liable to be dismissed under Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951.*

*34. In that view of the matter, Election petition being no. 3/2019 filed by the respondent-election petitioner deserves to be dismissed, and is accordingly dismissed."*

18. Reliance was also placed on following paragraphs in case of *Azhar Hussain v. Rajiv Gandhi*, reported in 1986 Supp SCC 315:

*"8. The argument is that inasmuch as Section 83(1) is not adverted to in Section 86 in the context of the provisions, non-compliance with which entails dismissal of the election petition, it follows that non-compliance with the requirements of Section 83(1), even though mandatory, do not have lethal consequence of dismissal. Now it is not disputed that the Code of Civil Procedure (CPC) applies to the trial of an election petition by virtue of Section 87 of the Act [87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits: Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings. (2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.] . Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) which read thus:*

*"Order 6, Rule 16: Striking out pleadings.—The court may at any stage of the proceedings order to be struck out or amend any matter in any pleading—*

*(a) which may be unnecessary, scandalous, frivolous or vexatious; or*

*(b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or*

*(c) which is otherwise an abuse of the process of the court.*

*Order 7, Rule 11: Rejection of plaint.—The plaint shall be rejected in the following cases:*

*(a) where it does not disclose a cause of action;    "*

*9. The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised.*

*10. There is thus no substance in this point which is already concluded against the appellant in Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] wherein this Court has in terms negatived this very plea in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passage extracted from the judgment of A.N. Ray, J. who spoke for the three-judge Bench: (SCC p. 221, paras 22 and 23)*

*"The allegations in para 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action.*

*Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by*

*the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed."*

*11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant case [Samant N. Balkrishna v. George Fernandez(1969) 3 SCC 238] has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh case [Udhav Singh v. Madhav Rao Scindia(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.*

#### *Ground B*

*25. In this case also, no time, date and place of the speeches delivered by the respondent have been mentioned. No exact extracts from the speeches are quoted. Nor have the material facts showing that such statements imputed to the respondent were indeed made been stated. No allegation is made to the effect that it was in order to prejudice the election of any candidate. Or in order to further the prospects of the election of the respondent. The essential ingredients of the alleged corrupt practice have thus not been spelled out. So far as the meeting is*

concerned, the principle ["... The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point...."] laid down in *Nihal Singh case* [(1970) 3 SCC 239] discussed in the context of the charge contained in ground II(i) is attracted. The view taken by the High Court is therefore unexceptionable.

*Ground II(iii)*

*26. The alleged corrupt practice as incorporated in ground II (iii) reads as under:*

*"In line with the respondent's speeches, his workers with the knowledge and consent of the respondent and other agents of the respondent entrusted with the task of conducting the election campaign caused a poster of Hindi and Urdu to be affixed in all prominent places throughout the constituency. The said poster was in fact a page of the Blitz newspaper of 30-6-1984 called the Id Special. The Id that year was on 1-7-1984. The heading of the said poster which was underlined in red alleged conspiracy between the leader of the petitioner party and Bhindaranwale. Photographs of Mrs Maneka Gandhi and Bhindaranwale appeared separately on left and right hand corners of the said advertisement. A literal English translation of the poster is given below: A copy of the said poster will be filed as Ex. B. The poster also purported to carry a facsimile copy of a letter dated 10-9-1983, purporting to be addressed by Shri Kalpnath Sonkar, a member of the Rashtriya Sanjay Manch, to Shri Bhindaranwale. The letter is a forgery and that it was forged was publicly stated by alleged author of the alleged letter and a criminal case is pending in the matter thereof. The letter was fabricated expressly for the express purpose of showing:*

- (a) that Mrs.Maneka Gandhi was in secret conspiracy with Bhindaranwale.*
- (b) that Mrs.Maneka Gandhi illegally supplied arms to Bhindaranwale and other secessionists and terrorists.*
- (c) that Maneka Gandhi was in sympathy with the creation of Khalistan and the division of the country and the use of violence to achieve that end.*

*The said allegations are totally false and fabricated. The respondent knew them to be false. He did not and could not believe them to be true. That complaints were made to the District authorities about the obnoxious wall paintings and posters to which the attention of the respondent had been drawn. The said authorities while clearly admitting the RSM election agents and worker as well as to the press correspondents that they were objectionable took no steps to remove or obliterate them. Prominent newspapers and press correspondents continued to draw attention to those slogans and posters but the respondent or his workers took no step whatsoever to stop their exhibition, circulation and use. The respondent condoned and sanctioned the exhibition and circulation of this poster. He did nothing to stop the use thereof by his workers. The wall painting mentioned above and this poster were paid out of Congress (I) party's funds. These were therefore, his own expenses sanctioned by himself. Cutting of some of the newspaper reports will be filed as Ex. C."*

*Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?*

*35. The pleading therefore does not spell out the cause of action. So also on account of the failure to mention the material facts, the court could not have permitted the election petitioner to adduce evidence on this point. It would therefore attract the doctrine laid down in Nihal Singh case [(1970) 3 SCC 239] and there would be nothing for the respondent to answer.*

*Ground XV*

*36. Alleged corrupt practice as incorporated in ground XV reads as under:*

*"That during the course of the campaign, the respondent, his election agent and his party brought into existence a propaganda committee to further the prospects of the respondent's election. This committee was called the 'Amethi Matdata Parishad'. Through the agency of this committee, the respondent, his election agent and others with their consent and knowledge caused another pamphlet to be printed, published and circulated during the entire election campaign under the title 'How do Intelligent people think? Who is an obstacle in the progress of Amethi'. The said pamphlet inter alia, contains the following statements:*

*'That Maneka Gandhi is surrounded only by anti-social elements. She was also seen in the company of terrorists. Her whole campaign is based on money.... In my view, Maneka seems to have a big hand in the fire of Punjab. Maneka has no merit of her own. If she had anything in her, it would have come out before her marriage to Sanjay. If she had any desire for leadership or service of the country, she would have cooperated with her husband. Politics is for her a pursuit of pleasure ("shaukiya dhandha"). Therefore, she is conducting her politics on the strength of people like Haji Mastan and Virendra Shahi.... A woman who could not protect the honour of a vast country like India. Maneka is the destroyer of the country.'*

*The petitioner says that the entire trend of this pamphlet and the propaganda conducted on the basis thereof casts serious aspersions on the personal character of a candidate. Each of these statements is false to the knowledge of the respondent and others. The printing, publication and circulation of the said pamphlet and the propaganda based thereon was, in any event, done by the agents of the respondent and in the interests of the election of the respondent. These statements are in relation to the personal character or conduct of a candidate and they are in relation to her candidature. These statements were reasonably calculated to prejudice the prospects of the petitioner's election. The election of the respondent is thus liable to be declared void under Section 100(1)(b). This was also liable to be set aside under Section 100(1)(d)(ii), inasmuch as, the result of the election insofar as it concerned the returned candidate, has been materially affected by this gross corrupt practice.*

*In this pamphlet, the same Jagdish Piyush who is referred to in the pamphlet in the preceding paragraphs, is one of the contributors and in that contribution, he has referred to his publication mentioned in the previous paragraphs."*

*Why the High Court held that material facts and particulars are absent and did not disclose a cause of action?*

*37. The High Court observed:*

*"The petitioner has set out specific statements from this pamphlet commenting adversely on the character and conduct of Smt. Maneka Gandhi where, inter alia, her*



*association with terrorists and other persons of questionable antecedents was set out. It has been stated that these statements are false to the knowledge of the respondent and others and the pamphlet was distributed by the agents of the respondent in the interests of the election of the respondent and that the result, so far as the respondent is concerned, has been materially affected by the corrupt practice. Here also, the petitioner has made an omnibus statement of the printing, publication and circulation of the pamphlet by the respondent, his election agent and others with their consent and knowledge without trying to pinpoint the particular person who had done so. The places, dates where the pamphlets were distributed have also not been indicated. It was necessary for the petitioner to do under the law as set out above. The pleading is therefore, vague, embarrassing and lacks in material facts and, therefore, must fail. The petitioner's prayer for an amendment to delete the proposal to file a copy of the pamphlet is allowed as it is evidence and not integral part of the petition."*

*Whether the High Court was right in taking the aforesaid view?*

*38. In view of the doctrine laid down in Nihal Singh case [(1970) 3 SCC 239] as early as in 1970, the High Court was perfectly justified in taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, the pleading would not disclose a cause of action. There would be nothing for the respondent to answer and the matter would fall within the doctrine laid down in Nihal Singh case [(1970) 3 SCC 239]. The learned counsel for the appellant is unable to show how the court has committed any error in reaching this conclusion."*

19. On other hand, learned counsel for petitioners sought to oppose application. It was submitted that application was misconceived and filed with intention to dilate proceedings.

20. It was submitted Part VI of ROPA dealt with disputes regarding elections. Section 79 provided definitions,

while Section 80 provided that no election could be called in question except by an election petition presented as provided in Part VI.

21. Section 80A provided that only High Court would have jurisdiction to try election petition which could be presented as per Section 81 on any grounds set out in Section 100 and 101 of ROPA by any candidate at such election, or any elector within 45 days of declaration of results of such election. Sub-section (3) required election petition to be filed with as many copies as respondents and each copy to be attested by petitioner. It was submitted that Section 82 prescribed parties to petition, while Section 83 its contents and Section 84 relief that could be claimed. Further Section 86 stipulated procedure for trial of election petitions. It was further submitted that as per Section 87 (1), provisions of CPC would as far as possible apply to election petitions subject to Election Petition Rules that may be framed. It was submitted that Section 100 stipulated limited grounds on which elections could be declared void. It was submitted Section 100 (1) (b) mandated establishment of commission of corrupt practice by returned candidate or with consent of returned candidate or his election agent.

22. It was further submitted as per Section 100 (1) (d) (ii), election could be declared void even where it were established that result of election was materially affected by any corrupt practice committed in interest of returned candidate by an agent other than his election agent. Attention was also drawn to definition of corrupt practices under Section 123 of ROPA. It was submitted, specific corrupt practice alleged in present petition was under Section 123 (1) (A) (b) (ii) namely bribery of electors to vote for returned candidate at election.

23. It was submitted, there was no dispute about election petition suffering from technical defects regarding proper Court, proper parties and reliefs sought. It was submitted that in paragraph no.3, petitioner had averred about conduct of elections and declaration of results wherein respondent was declared elected. It was submitted in paragraphs no.7 to 11, petitioners had provided their details as electors by references to voters list of constituency, paragraph no.13 about respondent being returned candidate. It was submitted that in paragraphs no.14 to 16 details of corrupt practice being committed as per instructions of respondent

were stated. It was submitted that there was specific assertion about meeting being convened by respondent on 06.05.2023, 07.05.2023 and 09.05.2023 at Block Congress Committee Office. It was also specifically averred that respondent was personally present in said meeting. In subsequent paragraphs up to paragraph no.16, details with sufficient particulars of gift cards being distributed as inducement to vote in favour of returned candidate, registration of FIR against respondent for offence of commission of corrupt practice under Section 123 (1) A, B and Section 127A of ROPA were stated.

24. Insofar as requirement of affidavit in Form no.25, it was submitted that affidavit filed would be sufficiently compliant. It was submitted that form of affidavit was not material and even if affidavit were to be defective, same was curable and not fatal. Therefore, application filed for rejection of election petition on ground of failure to comply with Rule 94A of Rules would be liable for rejection.

25. It was further contended that respondent had entered appearance and filed written statement on 09.10.2023, but no specific contention about petition being defective for want of material etc have been urged.

26. In response to contention of applicant, it was submitted that production of all documents based on which petitioners were seeking for avoiding election of respondent at time of filing petition was not mandatory. Since it was matter of evidence, same could be produced during trial.

27. Insofar as objections about failure to disclose whether petitioners had personal knowledge about commission of corrupt practice by returned candidate or that they believed them to be true from information received from someone else, which they believed to be true, it was contended that petitioners were electors of Ramanagara Assembly Constituency and had stated their credentials in paragraphs no.7 to 11 of petition. They had also stated they had full knowledge, details of same would be revealed during trial and not at stage of consideration of application under Order VII Rule 11.

28. Insofar as requirement of material facts with full particulars, it was submitted that same were duly stated in paragraphs no.14 to 16 of petition with particulars of date, time and place of holding of meeting, persons who handed over gift cards to petitioners and manner of commission of corrupt

practice by returned candidate. It was submitted that petitioners had also stated about press conference held by returned candidate on 22.05.2023, at 4:30 PM in Congress Office, Ijoor, Ramanagara, wherein he admitted to have issued gift cards to voters as reward for voting in his favour. Even said assertion was with full particulars including time, date and place of holding such press conference and also manner in which they had obtained copy of unedited video of press conference. In fact, petitioners had made transcript of entire press conference, part of petition.

29. It was further submitted that in paragraph no.26 of petition, petitioner had stated about registration of FIR in Crime no.39/2023, on 10.05.2023 against returned candidate, for offences punishable under Sections 123 (1) (A) and (B) and 127A of ROPA, on complaint of Mr.Rangaraju, Member of Flying Squad Team when he found a woman carrying 'gift card' displaying photo, name and symbol of political party of returned candidate, near polling station no.108, 117 and 118 on 10.05.2023 i.e. date of election.

30. It was submitted that based on above facts/allegations, petitioners had narrated grounds for setting

aside election of returned candidate, in paragraphs no.27 to 32 of petition. Therefore, on perusal of entire election petition, it could be seen to disclose clear and complete cause of action against returned candidate. Hence, application filed was liable to be dismissed.

31. It was also contended that it was not case of returned candidate that petitioners had not complied with Section 81 of ROPA, but allegation was mainly about non-conformity with Section 83 of ROPA. Likewise, contents of affidavit filed in support of present application would reveal only allegation of failure to provide 'full material particulars' and not 'material facts', which is held not valid ground for rejection of petition at threshold.

32. It was lastly contended that no contention of petition being defective for want of full particulars of material facts was even urged. Hence, application was wholly untenable and liable for rejection.

33. Reference was made to following observations of Hon'ble Supreme Court in case of Thangjam Arunkumar v. Yumkham Erabot Singh, reported in 2023 SCC OnLine SC 1058:

*"This appeal arises out of the decision of the High Court of Manipur dated 11.04.2023, whereby the returned candidate's application under Order 7 Rule 11 of the Civil Procedure Code, 1908, to dismiss the election petition filed by the unsuccessful candidate on the ground that it lacks material particulars and is in violation of mandatory requirements of law was rejected by the High Court. The returned candidate is the Appellant before us.*

*Facts:*

*2. The short and precise facts necessary for our consideration are as follows. The Appellant is the returned candidate to the XII Manipur Legislative Assembly, having been elected from the 15-Wangkhei Assembly Constituency. The Respondent No.1, the unsuccessful candidate moved Election Petition no.24 of 2022 alleging violations under Sections 80, 80A, 81, 84 read with Sections 100(1)(d)(iv) and 101 of the Representation of People Act, 1951. The election petitioner prayed that the election of the Appellant be held void and also to declare him to be the elected candidate. It is important to note that the election petition alleges corrupt practice, in as much as the petitioner pleaded that the returned candidate has not provided the material particulars with respect to a financial transaction relating to financing a loan.*

*3. In response to the election petition, the Appellant moved two applications under Order 7 Rule 11 read with Section 151 of the CPC and under Section 86 of the Act seeking dismissal of the election petition on the grounds of –*

*(i) non-disclosure of cause of action/triable issue vis-à-vis the alleged corrupt practice committed by the Appellant;*

*(ii) the absence of a concise statement of facts as mandated under Section 83 of the Act; and*

*(iii) for not serving a true self attested copy of the election petition on the returned candidate as provided under Section 81 of the Act. Apart from the above, and more importantly, the Appellant also sought dismissal of the election petition on the ground that the Form-25 affidavit as prescribed under Section 83 of the Act r/w Rule 94A of the Conduct of Election Rules, 1961 has not been filed along-with the election petition. It was alleged that such an*



*affidavit is mandatory, as the election petition raises allegations of corrupt practice.*

*4. The High Court, by the order impugned, dismissed the applications under Order 7 Rule 11 of the CPC. The High Court observed that - (i) the election petitioner had elaborately pleaded all the material facts and set forth full particulars of all the actions and omissions of the Appellant, sufficient to constitute a case of corrupt practice. The High Court, therefore, concluded that there is a cause of action and triable issues; (ii) the High Court also concluded that the alleged non-compliance of Section 81(3) of the Act is incorrect as the election petitioner had effectively attested the election petition. For this purpose, High Court relied on the decisions of this Court in Ch. Subbarao v. Member, Election Tribunal, Hyderabad, and also a decision of the same Court in Pukhrem Sharatchandra Singh v. Mairembam Prithviraj @ Prithibiraj Singh, later came to be upheld by this Court in Mairembam Prithviraj @ Prithviraj Singh v. Pukhrem Sharatchandra Singh. The High Court observed that although the election petitioner attested the election petition as "true copy of the original" and not as "true copy of the petition", the same is in compliance with Section 81(3) of the Act.*

*5. The submission that in all cases involving allegations of corrupt practices, the election petitioner must mandatorily file an affidavit under Section 83(1) of the Act was rejected without much discussion. The High Court simply following the decision of this Court in Lok Prahari through its General Secretary v. Union of India, rejected the plea.*

*Submissions:*

*6. Mr.Devadatt Kamat, learned senior counsel appearing for the Appellant initially argued the first two grounds, namely that there is a non-disclosure of the cause of action and also that there is a complete non-compliance of the requirement under Section 81(3) of the Act with respect to the attestation of the election petition. However, as we expressed our disinclination to interfere on those grounds, he took up the alternative point and emphatically argued that the judgment of the High Court is unsustainable as the election petition completely violated the 'mandatory' requirement of 83(1)(c) of the Act. He argued that the election petition must fail for not filing the additional affidavit in support of the allegation of corrupt practice. He elaborated this point by taking us through the Section, and in particular, the proviso which requires that in cases of*

*corrupt practice, "the petition shall also be accompanied by an affidavit".*

*7. On the specific submission of Mr.Devadatt Kamat as to how the election petition alleging corrupt practice must fail for not filling the additional affidavit, Mr.Shadan Farasat, learned counsel for the election petitioner submitted that no such additional affidavit is filed. Mr.Farasat, however, strengthened his case in the written submission by referring to the decisions of this Court in G.M. Siddeshwar v. Prasanna Kumar, and A. Manju v. Prajwal Revanna, where it was held that non-filing of a Form-25 affidavit is a curable defect.*

*Issue for consideration:*

*8. The only issue for consideration is whether the election petition is liable to be dismissed by allowing the Order 7 Rule 11 application for non-compliance of Section 83(1)(c) of the Act.*

*Analysis:*

*9. We may at the outset state that there is absolutely no consideration of this issue by the High Court. Neither the implications of Section 83(1)(c) of the Act, nor the interpretation of its proviso were taken up for consideration by the High Court. Further, surprisingly, the High Court simply referred to the decision of this Court in Lok Prahari (supra) and rejected the submission. Lok Prahari (supra) has no bearing on the issue.*

*10. We would refer to the statutory provisions and the judgments on the point for answering the question of law raised by the Appellant. We will first refer to Sections 83 and 86 of the Act and Order 6 Rule 15 of the CPC.*

*83. Contents of petition — (1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.*

*(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

*86. Trial of election petitions — (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.*

*Order 6 Rule 15: Verification of pleadings — (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.*

*(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

*(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

*(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."*

*11. The first decision on this issue is by a Constitution Bench in T.M. Jacob v. C. Poullose. In the said case, the returned candidate was defending an election petition filed against him on the ground of non-compliance with the requirements under Section 81(3) of the Act. This Court, after going through the difference in the legislative intent of Sections 81 and 83 of the Act, observed that non-compliance with the requirements of the former provides for an automatic dismissal of an election petition under Section 86 of the Act, and non-compliance with the latter is a curable defect and would not merit dismissal at the threshold. In this light, this Court observed that:*

*"38. ... to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes — those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the*

*provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in Murarka Radhey Shyam, (1964) 3 SCR 573 and Ch. Subbarao, (1964) 6 SCR 213 cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure."*

*12. In Siddeshwar (supra), the matter came up before a three-judge bench of this Court by way of a reference. When the matter was placed before a two-judge bench, it was contended, relying upon P.A. Mohammed Riyas v. M.K. Raghavan, that an election petitioner has to file the Form-25 affidavit in support of the corrupt practice allegation, in addition to the usual verifying affidavit which forms an integral part of the election petition. On the other hand, the two-judge bench was also apprised of judgments to the contrary which held that not filing of the affidavit is a curable defect. In order to give quietus to the issue, the matter was referred to a bench of three judges. After relying on various precedents, the three Judge Bench in Siddeshwar observed as under:*

*"1. The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Civil Procedure Code, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan, (2012) 5 SCC 511, which suggests to the contrary, does not lay down correct law to this limited extent.*

*2. Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961, whether the election petition is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election*

*petition as understood by the Representation of the People Act, 1951.*

*22. A plain reading of Rule 15 suggests that a verification of the plaint is necessary. In addition to the verification, the person verifying the plaint is "also" required to file an affidavit in support of the pleadings. Does this mean, as suggested by the learned counsel for Siddeshwar that Prasanna Kumar was obliged to file two affidavits—one in support of the allegations of corrupt practices and the other in support of the pleadings?*

*23. A reading of Section 83(1)(c) of the Act makes it clear that what is required of an election petitioner is only that the verification should be carried out in the manner prescribed in CPC. That Order 6 Rule 15 requires an affidavit "also" to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document.*

*25. It seems to us that a plain and simple reading of Section 83(1)(c) of the Act clearly indicates that the requirement of an additional affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of the pleadings filed under CPC may be mandatory in terms of Order 6 Rule 15(4) CPC, the affidavit is not a part of the verification of the pleadings—both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1)(c) of the Act.*

*37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.*

*38. Recently, in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say:*

*"28. ... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no*

*matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so."*

*We have no reason to take a different view. The contention urged by Siddeshwar is rejected."*

*(emphasis supplied)*

*13. More recently, in A. Manju v/s Prajwal Revanna (supra), this Court dealt with the same question as to whether an election petition containing an allegation of corrupt practice but not supported by an affidavit in Form 25, is liable to be dismissed at the threshold. This Court had observed:*

*"26. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788 as well as G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form."*

*(emphasis supplied)*

*14. The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.*

*15. In the instant case, the election petition contained on affidavit and also a verification. In this very affidavit, the election petitioner has sworn on oath that the paragraphs where he has raised allegations of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements under Section 83(1)(c) of the Act."*

34. Following paragraphs in Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao, reported in 2023 SCC OnLine SC 871 were also referred to:

*"The present appeal by special leave questions a judgment and order of the Telangana High Court dismissing an application which sought rejection of the respondent's election petition. The appellant had contended that the election petition (hereafter "the petition") did not disclose any cause of action and was barred in law and was liable to be rejected.*

*2. In the present case, the High Court noticed the contentions of the parties as well as the pleadings and was of the opinion that having regard to the terms of Order VII Rule 11 CPC, only the averments in the petition and the accompanying documents could be considered and not any other materials brought on record during the course of the proceedings. The Court was of the opinion that taking in the overall conspectus of the facts available on the record did not lead to a compelling reason for rejecting the election petition. Accordingly, the appellant's application was dismissed, and the contentions were kept open to be agitated during the trial.*

*7. The appellant's main contention was that though the appellant had urged several grounds with respect to its explanation for the alleged non-compliance of what were termed by the election petitioner as mandatory requirements, it was also alleged that Section 81(3) had not been complied with. However, during the hearing, the arguments on behalf of the appellant, by Mr. C.S. Sundaram, Senior Advocate, were confined to submissions*

to the aspect regarding non-disclosure of criminal cases. The first related to a criminal case pending before the CJM, Garhwa bearing CR 96P; case No. CF 97/13 dated 20.03.2013 in Form 26, i.e., the election affidavit. The second case was with respect to non-disclosure in Form 26 of conviction. It was alleged that the cases referred to in the election petition, i.e., Labour Enforcement Officer v. Patil Construction represented by (1) Mr. B.B. Patil (partner) and (2) Mr. M.B. Patil (partner) (Case No. 20/12), this case pertained to non-payment of minimum wages to workers under the Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956. The appellant was convicted on 30.07.2013; the second case pertained to State through Labour Enforcement Officer v. Patil Construction represented by B.B. Patil and M.B. Patil before Sub Divisional Judicial Magistrate registered under Section 22A of the Minimum Wages Act, 1948 for non-maintenance of records of workers/employers. The appellant was convicted on 05.09.2017.

8. It was argued by Mr. Sundaram that the reference to the pending case before the CJM Garhwa District, in the documents filed along with the election petition, was an abuse of process and a clear case of interpolation. Learned counsel pointed out that this aspect has been acknowledged by the main judgment in para 27, whereby after considering the certified copy relating to that case, the court observed that there appeared to be some interpolation. Learned counsel reiterated the submissions and referred to certified copies which were placed on record. He also referred to the original of the complaint which was summoned by this court during the present proceedings. It was further stated that the conclusion of the High Court with respect to the non-disclosure of two cases in respect of the Payment of Wages Act and Minimum Wages requiring them to be gone into during the trial is in error. Learned counsel contended that even upon conviction, the minimum threshold indicated in Section 33A of the Act is not satisfied because, in either way, the maximum sanction is a penalty.

9. Dr.A.M. Singhvi, learned senior counsel for the election petitioner, urged that the impugned order correctly appreciated the law relating to Order VII Rule 11 and dismissed the appellant's application. Counsel reiterated that the suppression of the truth with respect to criminal cases, i.e., non-disclosure of cases where the petitioner was convicted and of pending cases, in Form-26 affidavit were in relation to the following:



a) Pending cases: The appellant did not disclose the criminal case pending before the Chief Judicial Magistrate Garhwa relating to Forest Department cases.

b) Regarding cases in which the appellant was convicted (in section 6 of Form-26), there was a deliberate attempt to suppress the truth; the appellant had written "not applicable" when there were two cases in which he was convicted: firstly case No. 20/2012 Labour Case relating to Payment of Wages and Minimum Wages Act, and secondly, Case No 1/2013, another case relating to Payment of Wages and Minimum Wages Act.

10. It was submitted that going into the merits of whether those cases actually existed, and related to the provisions of the Act, would amount to a mini-trial which is plainly impermissible while considering an application seeking rejection of the petition. It was submitted that the law on the subject is well settled. Counsel stated that the judgments of this court, such as *Saleem Bhai v. State of Maharashtra* and *Mayar (H.K.) Limited v. Owners and Parties, Vessel M.V. Fortune Express* had, in no uncertain terms, ruled that while considering an application under Order VII Rule 11, CPC, only the averments in the pleadings (i.e., in the suit or petition) and the accompanying documents can be looked into. Therefore, reference to and reliance on any document which was not part of the petition, but produced as a part of the respondent/defendant's plea, cannot be considered.

26. It is a salutary position in law that there cannot be a partial rejection of the plaint (or petition, as in this case) in exercise of power under Order VII Rule 11, CPC. This court had stated this principle, in *Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.* in the following manner:

"This cannot elevate itself into a Rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected Under Order VII Rule 11. In all such cases, if the plaint survives against certain Defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial."

27. This principle was stated clearly, in *D. Ramachandran v. R.V. Jankiraman* which, in relation to an election petition, explained the position as follows:

"The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot

*therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition."*

*28. There is some authority for the proposition that the court's power under Order XII Rule 6, CPC, is not only discretionary but requires exercise of caution and that unless an admission is unambiguous, enabling the court to draw a decree, the power would not be exercised. Thus, in Himani Alloys Ltd. v. Tata Steel Ltd., this court held that:*

*"It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear 'admission' which can be acted upon. (See also Uttam Singh Duggal and Co. Ltd. v. United Bank of India 2000 Supp (2) SCR 187; Karam Kapahi v. Lal Chand Public Charitable Trust (2010) 4 SCR 422 and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha (2010) 6 SCC 601"*

*29. A plain look at the election petition reveals that apart from allegations pertaining to non-disclosure of criminal cases pending against the appellant, or cases where he was convicted, other averments and allegations have been made regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers' reach amongst the populace, etc. The alleged non-compliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary*

*proceedings under Order VII Rule 11, CPC, or even under Order XII Rule 6, CPC. Even if the allegations regarding non-disclosure of cases where the appellant has been arrayed as an accused, are ultimately true, the effect of such allegations (in the context of provisions of law and the non-disclosure of all other particulars mandated by the Election Symbols orders) has to be considered after a full trial. The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, wholly. Even in respect of the undeniable nature of the judicial record, the effect of its content, is wholly inadequate to draw a decree in part. This court has also ruled that the truth or otherwise of anything is ordinarily a matter of evidence, in a full-blown trial, in Virender Nath Gautam v. Satpal Singh:*

*"52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside."*

35. And on following paragraphs in case of A. Manju v.

Prajwal Revanna, reported in (2022) 3 SCC 269:

*"Facts:*

*1. The moot point for consideration in the present appeal is whether an election petition can be thrown out at the threshold on a plea of the respondent/elected candidate that the petition is not supported by an affidavit in Form 25, as prescribed under Rule 94-A of the Conduct of Election Rules, 1961, even though the petition is based on allegations of corrupt practices.*

*Conclusion:*

*22. We must begin at the inception by stating that intrinsically, election law is technical in nature. In the present matter, an election conducted under an independent body like the Election Commission is sought to be assailed, where the mandate of the public has gone in a particular way. The allegations must strictly fall within the parameters of the manner in which such a mandate can be overturned. The primary plea taken by the appellant is largely that*

success in the elections was obtained by concealment of material, which would have been germane in determining the opinion of the electorate. In effect, were such material to be available with the electorate, they would have exercised another option on the basis of it. However, while the requirements to be met in the election petition may be technical in nature, they are not hypertechnical, as observed in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788]. We have considered the aforesaid aspect by quoting the observations made therein which have received the imprimatur of a larger Bench.

23. In the conspectus of the aforesaid, if we examine the facts of the present case, the hypertechnical view sought to be taken of non-signing and verification of the index and the synopsis has been rightly rejected by the High Court.

24. Thus, the real and core question before us is that in view of the allegations of the alleged non-disclosure of assets in Form 26 by Respondent 1 being cited as "corrupt practice", would it be mandatory for the election petitioner to file an affidavit in Form 25 and what would be the consequences of not filing such an affidavit.

25. We may take note of the Constitution Bench judgment of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, (1964) 3 SCR 573: AIR 1964 SC 1545] which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] to come to a conclusion that non-compliance with the proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied i.e. even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33-A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of Respondent 1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.

26. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the

*election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] as well as G.M. Siddeshwar [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715], ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.*

*27. The arguments of the learned counsel for Respondent were predicated on the distinction between the absence of an affidavit and a defective affidavit. This presupposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very narrow reading of the provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of Respondent 1.*

*28. The appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by Respondent 1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.*

*29. The result of the aforesaid is that the impugned order of the learned Single Judge dated 17-1-2020 [A. Manju v. Prajwal Revanna, 2020 SCC OnLine Kar 1654] is set aside and the application filed by Respondent 1 under Order 7 Rule 11, Section 151 of the said Code and Section 86(1) of the RP Act would stand dismissed with liberty to the appellant to file an appropriate affidavit in Form 25 within fifteen (15) days from today. The further proceedings in the election petition are required to be taken up urgently as almost two-and-a-half years have gone on the preliminary skirmishes rather than the meat of the matter, which we are sure the learned Single Judge of the High Court would so do."*

36. Attention was drawn to following paragraphs in *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy*, reported in (2018) 14 SCC 1:

*"1. The present appeals emanate from the judgment and order dated 2-8-2016 [Peddireddigari Ramachandra Reddy v. Madiraju Venkata Ramana Raju, 2016 SCC OnLine Hyd 218: (2016) 6 ALD 299] of the High Court of Judicature at Hyderabad for Telangana and Andhra Pradesh, striking off paras 2 and 9 to 11 of the election petition as also dismissing the election petition, being Election Petition No. 8 of 2014 filed by the appellant challenging the election of Respondent.*

*23. The central issue in these appeals is : whether the contents of the subject election petition disclose cause of action warranting a trial? The High Court by a composite judgment allowed the two applications filed by Respondent 1 (returned candidate) praying for striking out Paras 2 and 9 to 11 of the election petition, being frivolous and vexatious and not containing any material facts and not disclosing any cause of action; and the second application for rejecting the election petition in limine for non-disclosure of cause of action.*

*24. Ordinarily, an application for rejection of election petition in limine, purportedly under Order 7 Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order 7 CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in*

*the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfill the statutory and institutional requirements referred to in clauses (a) to (f) of Rule 11. The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order 7 Rule 11 deserves consideration at the threshold.*

*25. On the other hand, the application for striking out pleadings in terms of Order 6 Rule 16 may be resorted to by the defendant(s)/respondent(s) at any stage of the proceedings, as is predicated in the said provision. The pleading(s) can be struck off by the Court on grounds specified in clauses (a) to (c) of Rule 16.*

*26. Indeed, if the defendant moves two separate applications at the same time, as in this case, it would be open to the court in a given case to consider both the applications together or independent of each other. If the court decides to hear the application under Order 7 Rule 11 in the first instance, the court would be obliged to consider the plaint as filed as a whole. But if the court decides to proceed with the application under Order 6 Rule 16 for striking out the pleadings before consideration of the application under Order 7 Rule 11 for rejection of the plaint, on allowing the former application after striking out the relevant pleadings then the court must consider the remainder pleadings of the plaint in reference to the postulates of Order 7 Rule 11, for determining whether the plaint (after striking out pleadings) deserves to be rejected in limine.*

*39. On reading the election petition as a whole, we have no hesitation in taking a view that the High Court misdirected itself in concluding that the election petition did not disclose any cause of action with or without Paras 2 and 9 to 11 of the election petition. Indeed, the pleadings of the election petition should be precise and clear containing all the necessary details and particulars as required by law. "Material facts" would mean all the basic facts constituting the ingredients of the grounds stated in the election petition in the context of relief to declare the election to be void. It is well established that in an election petition, whether a particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the*

*grounds relied upon and the special circumstances of the case. Particulars, on the other hand, are the details of the case set up by the party. The distinction between "material facts" and "full particulars" has been delineated in Mohan Rawale v. Damodar Tatyaba [Mohan Rawale v. Damodar Tatyaba, (1994) 2 SCC 392. This judgment has been adverted to in the reported decision relied on by the parties. The Court noted thus: (SCC pp. 397-99, paras 10-18)*

*"10. We may take up the last facet first. As Chitty, J. observed, "There is some difficulty in affixing a precise meaning to" the expression "discloses no reasonable cause of action or defence". He said: "In point of law ... every cause of action is a reasonable one." (See Republic of Peru v. Peruvian Guano Co. [Republic of Peru v. Peruvian Guano Co., (1887) LR 36 Ch D 489]) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83(1)(a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order 6 Rules 2 and 4 and Order 7 Rule 1(e) of the Code of Civil Procedure. There is a distinction amongst the "grounds" in Section 81(1); the "material facts" in Section 83(1)(a) and "full particulars" in Section 83(1)(b).*

*11. Referring to the importance of pleadings a learned author says:*

*'Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. ... They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible*



*evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award. ...'*

*[See : Jacob: "The Present Importance of Pleadings" (1960) Current Legal Problems, at pp. 175-76.]*

*12. Further, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp. "Material facts" are those which a party relies upon and which, if he does not prove, he fails at the time.*

*13. In Bruce v. Odhams Press Ltd. [Bruce v. Odhams Press Ltd., (1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] Scott L.J. said: "The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad." The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.*

*14. Halsbury refers to the function of particulars thus:*

*'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required.'*

*(See : Pleadings Vol. 36, para 38)*

*15. In Bullen and Leake and Jacob's "Precedents of Pleadings" 1975 Edn. at p. 112 it is stated:*

*'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to "open up" the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cotton L.J. has said [Spedding v. Fitzpatrick, (1888) LR 38 Ch D 410 (CA)] , 'the old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial'.'*

16. The distinction between "material facts" and "particulars" which together constitute the facts to be proved — or the *facta probanda* — on the one hand and the evidence by which those facts are to be proved — *facta probantia* — on the other must be kept clearly distinguished. In *Philipps v. Philipps* [*Philipps v. Philipps*, (1878) LR 4 QBD 127 at p. 133 (CA)] , Brett, L.J. said:

*'I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated. ... The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence to prove those facts. Erle, C.J. expressed it in this way. He said that there were facts that might be called the *allegata probanda*, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erle, C.J. that Rule 4 [now Rule 7(1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies.'*

17. Lord Denman, C.J. in *Williams v. Wilcox* [*Williams v. Wilcox*, (1838) 8 Ad & El 314 : 112 ER 857] said:

*'It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations.'*

18. An election petition can be rejected under Order 7 Rule 11(a) CPC if it does not disclose a cause of action. Pleadings could also be struck out under Order 6 Rule 16, *inter alia*, if they are scandalous, frivolous or vexatious. The latter two expressions meant cases where the pleadings are obviously frivolous and vexatious or obviously unsustainable."

(emphasis supplied)

40. In *Harkirat Singh* [*Harkirat Singh v. Amrinder Singh*, (2005) 13 SCC 511], this Court once again reiterated thus: (SCC p. 526-28, paras 46-48)

"46. From the above provisions, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in

*the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.*

*47. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.*

*48. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."*

*(emphasis supplied)*

*Again in paras 51 and 52, this Court observed thus : (SCC pp. 527-28)*

*"51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct*

*of fair trial and would not take the opposite party by surprise.*

*52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."*

*(emphasis supplied)*

*And again in para 72, the Court noted thus : (SCC p. 535)*

*"72. The Court, however, drew the distinction between "material facts" and "particulars". According to the Court, "material facts" are facts, if established would give the petitioner the relief prayed for. The test is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition."*

*(emphasis supplied)*

*41. In Ashraf Kokkur [Ashraf Kokkur v. K.V. Abdul Khader, (2015) 1 SCC 129] , this Court adverted to the exposition in M. Kamalam v. V.A. Syed Mohammed [M. Kamalam v. V.A. Syed Mohammed, (1978) 2 SCC 659] , G.M. Siddeshwar v. Prasanna Kumar [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] and in Para 21 noted that the pleadings must be taken as a whole to ascertain whether the same constitute the material facts involving triable issues. In para 22, the Court observed as follows : (SCC p. 139)*

*"22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial."*

(emphasis supplied)

42. The Court then went on to analyse the decision of a three-Judge Bench in *V.S. Achuthanandan v. P.J. Francis* [*V.S. Achuthanandan v. P.J. Francis*, (1999) 3 SCC 737], wherein it has been observed that (SCC p. 748, para 16) an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. Further, material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. It has also observed that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. Further, the implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood and that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. This decision also adverts to *Ponnala Lakshmaiah v. Kommuri Pratap Reddy* [*Ponnala Lakshmaiah v. Kommuri Pratap Reddy*, (2012) 7 SCC 788], wherein the Court observed that (at SCC p. 798, para 17) the courts need to be cautious in dealing with request for dismissal of the petition at the threshold and exercise their power of dismissal only in cases where on a plain reading of the petition no cause of action is disclosed.

43. The counsel for the contesting respondent has relied on the decisions in *Pendyala Venakata Krishna Rao v. Pothula Rama Rao* [*Pendyala Venakata Krishna Rao v. Pothula Rama Rao*, 2005 SCC OnLine AP 99: (2005) 3 ALD 47], particularly paras 8 to 10, 11 and 16 of the reported decision. In that case, on facts, the Court found that necessary material facts in relation to the ground of improper acceptance of nomination form were not pleaded by the election petitioner. In the present case, we have held that there is discernible pleading as to what objections were taken before the Returning Officer and as to why he was in error in not rejecting the nomination of Respondent 1.

44. The counsel for the contesting respondent also relied on the decision in *Samant N. Balkrishna v. George Fernandez* [*Samant N. Balkrishna v. George Fernandez*, (1969) 3 SCC 238]. No doubt this decision predicates that election petition is a statutory proceeding and not an action at law or suit in equity. There can be no debate with regard to this proposition. At the same time, we cannot be oblivious about the scope of the enquiry permissible at this stage by the election court/tribunal while considering the application under Order 7 Rule 11(a) CPC.

45. In *Kuldeep Singh Pathania* [*Kuldeep Singh Pathania v. Bikram Singh Jaryal*, (2017) 5 SCC 345 : (2017) 3 SCC (Civ) 147] , the decision [*Kuldeep Singh Pathania v. Bikram Singh Jaryal*, 2014 SCC OnLine HP 5911] of the High Court which is similar to the one under consideration (namely, the impugned judgment) had accepted the explanation offered by the respondents and meticulously dealt with it to conclude that the petition did not disclose any cause of action since it lacked material facts. The High Court passed that order purportedly in exercise of power under Order 14 Rule 2. This Court pointed out the distinction between an order under Order 7 Rule 11 to reject the election petition in limine for non-disclosure of cause of action and an order under Order 14 Rule 2 for disposal of the petition on a preliminary issue. In that case, the order passed by the High Court was relatable only to Order 7 Rule 11. This Court adverted to the decisions in *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [*Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*, (2006) 3 SCC 100] and *Virender Nath Gautam v. Satpal Singh* [*Virender Nath Gautam v. Satpal Singh*, (2007) 3 SCC 617] , and explicated that under Order 7 Rule 11(a), only the pleadings of the plaintiff-petitioner can be looked at as a threshold issue. Whereas, entire pleadings of both sides can be looked into for considering the preliminary issue under Order 14 Rule 2. Neither the written statement nor the averments or case pleaded by the opposite party can be taken into account for answering the threshold issue for rejection of election petition in terms of Order 7 Rule 11(a) of the Act.

62. As regards the application for early hearing of the election petition filed by the appellant before the High Court, the same be treated as disposed of in terms of this order. The imperativeness of expeditious disposal of the election petition is underscored in Section 86(7) of the 1951 Act. As per the said provision, the trial of the election petition is required to be disposed of preferably within six months from the date of its presentation before the High Court. Besides, this Court in *Mohd. Akbar* [*Mohd. Akbar v. Ashok Sahu*, (2015) 14 SCC 519] has highlighted the necessity of discharging the pious hope expressed by Parliament. Therefore, we may only request the High Court to expeditiously dispose of the election petition preferably within three months from the production of a copy of this judgment by either party before it."

37. Reference was also made to following observations in *Ajay Arjun Singh v. Sharadendu Tiwari*, reported in (2016) 15 SCC 219:

*"30. Before parting with this case, we would like to place on record that the procedure adopted by the appellant in initially filing a petition under Order 7 Rule 11 petition [Filed on 1-7-2014], praying that the election petition be dismissed and filing the instant application after a long gap [IA No. 12911 of 2014 in Election Petition No. 1 of 2014 was filed on 11-9-2014] is to be deprecated. Preliminary objections, if any (in cases where there is more than one), in an election petition are to be taken at the earliest point of time and in one go. The practice such as the one adopted by the appellant only tends to delay the adjudication of the election petition which are mandated [Section 86(7), Representation of the People Act, 1951] by Parliament to be decided within a period of six months. We declare that the later of such successive petitions must be dismissed by the High Courts in limine on that count alone."*

38. Reliance was placed on decision of Hon'ble Supreme Court in case of *Ashraf Kokkur v. K.V. Abdul Khader*, reported in (2015) 1 SCC 129:

*"1. The simple question arising for consideration in this case is whether the averments in the election petition disclose a cause of action as required under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). Incidentally, it may be noted that the election petition has been dismissed by the impugned judgment dated 16-11-2011 [Ashraf Kokkur v. K.V. Abdul Khader, Election Petition No. 2 of 2011, decided on 16-11-2011 (Ker)], which reads as follows:*

*Judgment*

*IA No. 4 of 2011 is allowed. Election petition is dismissed in limine as it does not disclose a complete cause of action or a triable issue."*

*Of course, detailed reasons are given in the order dated 16-11-2011 [Ashraf Kokkur v. K.V. Abdul Khader, Election Petition No. 2 of 2011, decided on 16-11-2011*

*(Ker)] in IA No. 4 of 2011, which is also under challenge in one of the appeals.*

*22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial [see Philipps v. Philipps [(1878) LR 4 QBD 127 (CA)] (QBD p. 133); Mohan Rawale v. Damodar Tatyaba [(1994) 2 SCC 392] (SCC p.399, para16)].*

*23. This Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315], at para 11, has held that: (SCC p. 324)*

*"11. ... Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge leveled and the circumstances of the case."*

*The charge leveled in the present case is that the respondent holds an office of profit as the Chairperson of the Kerala State Wakf Board and in that capacity he enjoys the profits attached to that office from the Government of Kerala.*

*24. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737], a three-Judge Bench of this Court has taken the view that only because full particulars are not given, an election petitioner is not to be thrown out at the threshold. To quote para 15: (SCC p. 747)*

*"15. ... An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge leveled, the ground relied upon, and in the light of the special circumstances of the case."*

*Again at para 16 of V.S. Achuthanandan case [(1999) 3 SCC 737], it was held that: (SCC p. 748)*



*"16. ... So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. ... the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars."*

*(emphasis supplied)*

*25. In Hari Shanker Jain v. Sonia Gandhi [(2001) 8 SCC 233], a three-Judge Bench of this Court held that the expression "cause of action" would mean facts to be proved, if traversed, in order to support his right to the judgment of the Court and that the function of the party is to present a full picture of the cause of action with such further information so as to make opposite party understand the case he will have to meet. To quote para 23: (SCC p. 251)*

*"23. ... The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238] and Jitendra Bahadur Singh v. Kirshna Behari [(1969) 2 SCC 433].) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead 'material facts' is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition."*

*26. In Syed Dastagir v. T.R. Gopalakrishna Setty [(1999) 6 SCC 337], while referring to the pleadings, it has been held at para 9 that: (SCC p. 341)*

*"9. ... In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. ... So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."*

*27. In Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100], this Court at para 12 held that: (SCC p. 115)*

*"12. ... The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint."*

*30. Guided by the settled principles of law referred to above, we are of the view that the election petition having disclosed a cause of action, it should not have been thrown out at the threshold. The impugned order and judgment [Asharaf Kokkur v. K.V. Abdul Khader, Election Petition No. 2 of 2011, decided on 16-11-2011 (Ker)] are hence set aside. The appeals are allowed. The election petition is remitted to the High Court for trial in accordance with law. There is no order as to costs."*

39. And to following paragraphs in Ponnala Lakshmaiah v. Kommuri Pratap Reddy, reported in (2012) 7 SCC 788:

*"2. The factual matrix in which the election petition came to be filed by the respondent has been set out at length by the High Court, hence need not be recounted except to the extent the same is essential for the disposal of the appeal. The High Court has, while holding that the averments made in the election petition raised triable issues and disclosed a cause of action, observed:*

*"23. As seen from the statement showing voter turnout report in connection with General Elections, 2009 to 98, Jangaon Legislative Assembly Constituency on 16-4-2009, the total votes polled, as reported by the Returning Officer, is shown as 1,50,678 from 251 polling stations. Whereas in the final result sheet in Form 20, total valid votes is shown as 1,51,411. So, from this document, it is clear that prima facie a proper counting had not taken place. Therefore, prima facie it can be said to be an irregularity on the part of the Returning Officer involved in dereliction of the duty. Similarly, there is a specific allegation that out of 653 postal ballots, the election petitioner would have secured more than 300 votes, if properly counted, and out of the said votes, 142 votes which were validly polled in favour of the election petitioner, were illegally declared as invalid and another 52 votes polled in favour of the election petitioner were counted in favour of the first respondent, and 45 invalid votes were illegally counted in favour of the first respondent. Since the margin between the elected candidate and the nearest rival is only 236 votes, had postal ballots been counted properly, then there would have been a possibility of materially affecting the result of the election insofar as the returned candidate. So, under no stretch of imagination, can it be said that the allegations in the election petition are vague.*

*24. No doubt, it is true that in view of the decision of the Apex Court, re-counting of the votes cannot be resorted to as a matter of course and every endeavour should be made to protect the secrecy of the ballots. But, at the same time, there is suspicion of the correctness of the figures mentioned in the crucial documents of the statement showing voters' turnout report and Form 20 final result sheet, where there is a variance between total number of votes polled and votes counted. The two basic requirements laid down by the Apex Court, to order re-*

*counting, are: (a) the election petition seeking re-count of the ballot papers must contain an adequate statement of the material facts on which the allegations of irregularity or illegality in counting are founded; and (b) on the basis of evidence adduced in support of the allegations, the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary.*

*Therefore, the questions whether counting of votes by the officials is in accordance with the rules and regulations and also whether the votes polled in favour of the election petitioner were rejected as invalid or there was improper counting of votes polled in favour of the returned candidate, are required to be decided after adducing evidence only. The allegation that because of the improper counting of postal ballots polled in favour of the election petitioner, the election petitioner could not secure 300 votes, if accepted as true at this stage, it would materially affect the election result because the margin of votes polled between the returned candidate and his nearest rival is very narrow. In the election petition, the allegation with regard to irregularity or illegality in counting of votes, which affects the election of the returned candidate materially, has been clearly stated in the election petition. It is not a vague or general allegation that some irregularities or illegalities have been committed in counting. Similarly, there is allegation that in the first instance, after totalling of all votes, the election petitioner secured a majority of 44 votes and the same was informed to the electronic media, and some TV channels telecasted the same immediately. A compact disc (CD) is also filed along with the election petition, in support of the said allegation. It is also alleged that none of the contested candidates filed any petition for re-counting of votes within maximum period of five minutes after the election petitioner was declared to have secured a majority of 44 votes. Therefore, there is prima facie material to show that there was irregularity or illegality in counting of votes which resulted in affecting materially the election of the returned candidate, so as to proceed further with the election petition. As, at this stage, prima facie case for re-counting, as seen from the allegations in the election petition, is made out, the pleadings cannot be struck off as unnecessary. Therefore, the question of rejecting the election petition at this stage does not arise."*

14. In *Harkirat Singh v. Amrinder Singh* [(2005) 13 SCC 511] this Court once again stated the distinction between material facts and particulars and declared that material facts are primary and basic facts which must be pleaded by the plaintiff while particulars are details in support of those facts meant to amplify, refine and embellish the material facts by giving distinct touch to the basic contours of a picture already drawn so as to make it more clear and informative. To the same effect are the decisions of this Court in *Umesh Challyill v. K.P. Rajendran* [(2008) 11 SCC 740] and *Virender Nath Gautam v. Satpal Singh* [(2007) 3 SCC 617].

15. The High Court has, in the present case, held that the material facts constituting the foundation of the case set up by the election petitioner have been stated in the election petition. That being so, the requirement of Section 83 of the Act viz. that "the petition shall contain a concise statement of material facts" has been satisfied. The question of dismissing the petition on that ground also therefore did not arise. The High Court in our opinion committed no wrong in coming to that conclusion.

17. While a successful candidate is entitled to defend his election and seek dismissal of the petition on ground legally available to him, the prolongation of proceedings by prevarication is not conducive to the ends of justice that can be served only by an early and speedy disposal of the proceedings. The courts have, therefore, to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Beyond that note of caution, we do not wish to say anything at this stage for it is neither necessary nor proper for us to do so."

40. And from decision in case of *Ram Sukh v. Dinesh Aggarwal*, reported in (2009) 10 SCC 541 following paragraphs were referred to :

"1. This appeal under Section 116-A of the Representation of the People Act, 1951 (for short "the Act") is directed against the judgment and order dated 15-1-2008 rendered by the High Court of Uttaranchal at Nainital in Election Petition no.3 of 2007 (M/S). By the impugned order, the High Court, upholding the preliminary objection

*raised by the first respondent, has dismissed the election petition mainly on the ground that it did not comply with the mandatory requirement of furnishing material facts so as to disclose the cause of action and was not supported by an affidavit in the prescribed form.*

*10. Section 83, the pivotal provision for the present case, requires that: (a) the election petition must contain a concise statement of "material facts" on which the petitioner relies and (b) he should also set forth "full particulars" of any corrupt practices which the petitioner alleges. Proviso to clause (c) of sub-section (1) of Section 83 also provides that where the petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It is plain that the requirement of disclosure of "material facts" and "full particulars" as stipulated in the section is mandatory.*

*11. Section 86 mandates that where the election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, the High Court should dismiss the election petition. Section 87 which lays down the procedure required to be followed by the High Court while trying an election petition, requires that every election petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code to the trial of the suits, subject of course to the provisions of the Act and of any requirement made thereunder.*

*12. It is evident that the controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts" required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out "material facts" in his petition?*

*13. The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete*

cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu* [(2004) 7 SCC 181].) Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., *inter alia*, laid down that:

(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;

(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(iv) material facts and particulars are distinct matters—material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and

(v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on

*the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.*

*16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)*

*"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."*

41. From decision in Virender Nath Gautam v. Satpal Singh, reported in (2007) 3 SCC 617 following references were made :

*"1. This appeal is filed by the appellant against the judgment and order dated 20-12-2004 passed by the High Court of Himachal Pradesh, Shimla in Election Petition No. 2 of 2003. By the said order, the High Court upheld the preliminary objection raised by the first respondent that the election petition did not disclose material facts and was liable to be dismissed.*

*27. Conduct of elections has been dealt with in Part V. Part VI relates to "Disputes regarding elections". Section 80 requires any election to be questioned only by way of election petition. Under Section 80-A, it is the High Court*

*which can try the election petitions. Section 81 provides for presentation of election petition and prescribes the period of limitation. Section 82 declares as to who shall be joined as respondents to such election petition. Section 83 deals with contents of the petition and reads thus:*



*"83. Contents of petition.—*

*(1) An election petition—*

*(a) shall contain a concise statement of the material facts on which the petitioner relies;*

*(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:*

*Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.*

*(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."*

*28. Section 100 enumerates grounds for declaring election to be void which inter alia includes improper reception, refusal or rejection of any vote or the reception of any vote which is void or there is non-compliance with the provisions of the Constitution or with the Act or rules or orders made under the Act. Section 101 empowers the High Court to declare a candidate other than the returned candidate to have been elected. Section 123 declares certain practices as "deemed to be corrupt practices".*

*29. From the relevant provisions of the Act reproduced hereinabove, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.*

*30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be*

*dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.*

*31. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus (3rd Edn.), p. 349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.*

*32. In the leading case of Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : (1874-80) All ER Rep Ext 1684 (CA)] , Cotton, L.J. stated:*

*"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."*

*33. In Bruce v. Odhams Press Ltd. [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] , Scott, L.J. referring to Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : (1874-80) All ER Rep Ext 1684 (CA)] observed: (All ER p. 294)*

*"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under RSC Order 25 Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : (1874-80) All ER Rep Ext 1684 (CA)] ); or 'a further and better statement of claim' may be ordered under Rule 7."*

*34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove*

*his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.*

*35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.*

*50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

*51. In our considered opinion, material facts which are required to be pleaded in the election petition as required by Section 83(1) of the Act read with Order 7 Rule 11(a) of the Code have been pleaded by the election petitioner, cause of action has been disclosed in the election petition and, hence, the petition could not have been dismissed by the High Court. The impugned order of the High Court suffers from infirmity and cannot be sustained.*

*52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.*

*53. On an additional ground also, the order of the High Court is liable to be set aside. All allegations in para 8 of the election petition, as also sub-paras (i) to (iv) of para 8 relate to improper*

*and illegal reception and acceptance of votes and the election petitioner has challenged the election of the returned candidate on that ground and not on the ground of "corrupt practice". He was, therefore, required to state material facts in the election petition under Section 83(1)(a) of the Act. It was, however, not necessary to "set forth full particulars", which is the requirement of Section 83(1)(b) of "any corrupt practice".*

*54. The High Court dismissed the petition inter alia on the ground that paras 8(i) to (iv) lacked in material particulars. Apart from the fact that the law does not require material particulars even in respect of allegations of corrupt practice but only full particulars and if they are lacking, the petition can be permitted to be amended or amplified under Section 86 of the Act, in the instant case, clause (b) of Section 83(1) had no application and the petition has been dismissed by the High Court by applying wrong test. On that ground also, the order passed by the High Court is unsustainable (vide Harkirat Singh v. Amrinder Singh [(2005) 13 SCC 511]).*

*55. For the foregoing reasons, the appeal deserves to be allowed and is, accordingly, allowed with costs. The order passed by the High Court is set aside. Election Petition No. 2 of 2003 is restored to file, and is remitted to the High Court to decide the same on merits. Since the election took place in February 2003 and the petition was dismissed on preliminary ground as not maintainable and is required to be decided on merits, the High Court is requested to give priority and dispose it of expeditiously."*

42. From decision of Apex Court in V.S. Achuthanandan Vs. P.J. Francis, reported in (1999) 3 SCC 737, following observations were relied on:

*"1. The appellant, a candidate of the CPI (M) contested and lost election from 99 Mararikulam Legislative Assembly Constituency in the State of Kerala by a margin of 1965 votes. The successful candidate was Respondent 1 belonging to the Indian National Congress. Not satisfied with the result of the election, the appellant filed Election Petition No. 11 of 1996 in the High Court of Kerala mainly*

*on the grounds of corrupt practices and illegalities in the counting of ballot-papers. He prayed for declaration that the election of the 1st respondent was void and that he was duly elected. Instead of filing any written statement, Respondent 1 filed preliminary objections which were made the basis of framing the following issues:*

- 1. Whether the petition has been presented in compliance with the provisions of the Representation of the People Act?*
- 2. Whether the absence of an affidavit in support of the allegations of corrupt practices in the petition is fatal to the maintainability of the petition?*
- 3. Whether there is a proper affidavit under Rule 94-A of the Conduct of Election Rules?*
- 4. Whether the allegations make out a cause of action at all warranting trial of the election petition?*
- 5. Whether the allegations for re-count are sufficient to hold a trial on that issue?*
- 6. Whether the failure to attest as true copy of the annexure produced along with the election petition is fatal?*
- 7. Whether the election petition is liable to be dismissed as not properly framed and filed?*

*2. Issues 1 and 4 were decided against the appellant holding that allegations made in paras 11(E), (F), (H), (J), (K), (M) and (P) lacked material facts and particulars and being vague and ambiguous required no trial. Issues 2, 3 and 6 were decided in favour of the appellant. Issue 5 was decided against the appellant holding that he had failed to establish that there existed a case where the re-counting could be ordered. Ultimately, the election petition was rejected under Section 83 of the Representation of the People Act read with Order 7 Rule 11(a) of the Code of Civil Procedure with costs assessed at Rs 1500. Feeling aggrieved by the judgment of the High Court, the appellant has preferred this appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as "the Act").*

14. In the instant case, as noted earlier, the election petition has been rejected by invoking the powers of Section 83 of the Act read with Order 7 Rule 11(a) of the Code of Civil Procedure. After referring to some judgments, the learned trial Judge of the High Court has concluded:

*"Read as a whole, the averments contained in the election petition do not satisfy the requirements of Section 83 of the Act. No prima facie case is made out to hold that the first respondent has committed corrupt practices or that it is a fit case where re-counting is to be ordered. On a perusal of the election petition, it is seen that the petitioner has not pleaded the material facts with necessary particulars which would enable the Court to grant the prayer made in the petition. Pleadings in the election petition do not make out a cause of action for ordering re-count, as prayed for in the petition. So, the election petition is liable to be rejected under Section 83 of the Act read with Order 7 Rule 11(a) CPC."*

15. It would thus appear that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose "material facts and full particulars" of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the "material facts" and the "material particulars" of allegations regarding corrupt practices as defined under Section 123 of the Act. The law on the point is well settled which appears to have not been taken note of or appreciated by the learned trial Judge. After referring to various pronouncements of this Court including cases in *Balwan Singh v. Lakshmi Narain* [AIR 1960 SC 770 : (1960) 3 SCR 91], *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238], *Virendra Kumar Saklecha v. Jagjiwan* [(1972) 1 SCC 826], *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511], *F.A. Sapa v. Singora* [(1991) 3 SCC 375] and *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* [(1995) 5 SCC 347] and a host of other authorities, this Court in *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666 : (1998) 6 Scale 361] held that while failure to plead "material facts" is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of "material particulars" can be cured at a later stage by an appropriate amendment. An election petition

*was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case. In Udhav Singh case [(1977) 1 SCC 511] the Court held: (SCC p. 523, paras 42-43)*

*"In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).*

*'Particulars', on the other hand, are 'the details of the case set up by the party'. 'Material particulars' within the contemplation of clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative."*

43. Likewise, from decision in *D. Ramachandran v. R.V. Janakiraman*, reported in (1999) 3 SCC 267 following paragraphs were referred to:

*"1. Aggrieved by the dismissal of his election petition EP No. 3 of 1996 on a preliminary issue, the appellant has approached this Court.*

*10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we*

*do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487]. We are satisfied that the election petition in this case could not have been rejected in limine without a trial."*

44. In case of Subhash Desai v. Sharad J. Rao, reported in 1994 Supp (2) SCC 446, following observations were sought to be relied on:

*"1. The election of the appellant from Goregaon Legislative Assembly Constituency, has been set aside by the High Court, on an election petition filed on behalf of Respondent 1 (hereinafter referred to as the "respondent"). The appellant had contested the election as a candidate of Shiv Sena, whereas the respondent as of Janata Dal.*

*10. Section 86 vests power in the High Court to dismiss an election petition which has not been properly presented as required by Section 81; or where there has been non-compliance of Section 82 i.e. non-joinder of the necessary parties to the election petition; or for non-compliance of Section 117 i.e. non-deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-compliance of the requirement of Section 83 of the Act. But Section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected, is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof*



*have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices are set forth properly in the election petition, the person whose election is challenged, is bound to be prejudiced in defending himself of the charges, which have been leveled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi-criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegation, without taking the responsibility about the correctness thereof. Before the court proceeds to investigate such allegations, the court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by Section 83, have been furnished in the election petition, the election petition can be dismissed, not under Section 86 but under the provisions of the Code of Civil Procedure, which are applicable, read with Section 83(1) of the Act, saying that it does not disclose a cause of action. This aspect has been examined by this Court in detail in the cases of Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315: (1986) 2 SCR 782]; Hardwari Lal v. Kanwal Singh [(1972) 1 SCC 214: (1972) 2 SCR 742].*

*12. The scope of Section 83(1) has been recently examined in the case of F.A. Sapa v. Singora [(1991) 3 SCC 375] where it was pointed out that the underlying idea in requiring the election petition to set out in a concise manner all the 'material facts' as well as the 'full particulars', where the complaint is in respect of commission of corrupt practice, is to "delineate the scope, ambit and limits of the inquiry at the trial by the election petition". In the present case, the allegations made, in the election petition, may be true or false, but it is not possible to hold that the election petition does not disclose any material fact or give the material particulars of any of the corrupt practices. It need not be pointed out that even if the court is satisfied that, in respect of one of the corrupt practices alleged, material facts and full particulars thereof have not been stated, still the election petition cannot be dismissed, if in respect of another corrupt practice the material facts and full particulars have been stated in accordance with the requirement of Section 83(1) of the Act.*

*13. In respect of the contention that the affidavit, supporting the corrupt practices alleged to have been committed by the appellant, is not as required by Section 83(1)(c) proviso, it was pointed out that reference has been made in the affidavit to paragraph 746, which contains the grounds for declaring the election of the appellant to be void and has no relation to the paragraphs giving particulars of corrupt practices. It is true that instead of saying that the statements, made in paragraph 746 of the election petition about the commission of corrupt practices, were true to the knowledge of the appellant, it should have been stated that the statements, made in paragraphs 49, 50, 50-A, 51 and 52 of the said petition were true to his knowledge. But, from bare reference to the other part of the affidavit, it shall appear that it has also been said that making of religious appeal to people and the particulars of the corrupt practices mentioned in paragraphs 49, 50, 50-A, 51 and 52 of the said election petition and the exhibits referred thereto, were true to the knowledge of the appellant. According to us, it cannot be held, in the facts and circumstances of the present case, that there was no affidavit supporting the allegations of corrupt practices, as required by Section 83(1)(c) proviso."*

45. Heard learned counsel and perused petition.

46. From above, following points arise for consideration:

- i. Whether election petition is liable to be rejected on ground of failure to indicate accrual of complete cause of action? And*
- ii. Whether election petition is liable to be rejected for failure to file verifying affidavit in prescribed Form no.25?*

47. Above application is filed for rejection of election petition at threshold mainly on two grounds. Firstly, for failure to plead accrual of complete cause of action as mandated by Sections 81 and 100 of ROPA. And secondly, for failure to disclose source of information as part of contention that there

was failure to file proper affidavit as required under Section 83 (1) (c) proviso read with Rule 94-A of Rules in prescribed Form no.25.

48. Insofar as failure to establish complete cause of action, it is stated that allegation of corrupt practice was based on pleading that a meeting was convened in Block Congress Office, Ramanagara on 06.05.2023, 07.05.2023 and 09.05.2023 wherein, it was decided by respondent to print and distribute gift cards to all voters in Ramanagara Assembly Constituency and that respondent who was personally present directed all Block Congress members and office bearers to ensure that gift cards reach every voter and in pursuance of same, persons named in paragraphs no.16(a) to (e) of petition and disturbed cards with consent of respondent.

49. It is also stated, whether petitioners were personally present in meeting or had knowledge about proceedings of meeting from someone present was not disclosed. It is stated that corrupt practices defined under Section 123 of ROPA fell into two categories, first where corrupt practice is committed by returned candidate or his election agent or any other person with consent of returned candidate

or election agent. It is further stated, second kind were those committed by any other person in interest of returned candidate.

50. It is further stated, Section 83(1) of ROPA mandates statement of material facts on which petitioner relies with full particulars of corrupt practice alleged to be signed and verified and also accompanied by an affidavit in support of allegation with full particulars of corrupt practice. It is further stated, petitioners were required to state in affidavit filed in Form 25 whether information about corrupt practice was within their personal knowledge or they believed it to be true. It is stated, petitioners had merely pleaded that gift cards were distributed with consent of returned candidate without disclosing basis for such assumption, especially when persons alleged to have distributed gift cards were not election agents.

51. Insofar as meeting held at Congress office, Ijoor, Ramanagara on 22.05.2023 at 4:30 p.m., where in press conference, statement was alleged to be given by returned candidate that gift cards given had not reached all concerned and efforts would be made to honour, commitment. It is stated that petitioners intend to imply consent by referring photograph

of returned candidate on such card and by asserting that petitioners had voted in favour of returned candidate based on such promise. It is stated that said allegations were inferential and by attempting to circumvent requirement of pleading and establishing consent, by means of clever drafting.

52. It is also alleged that affidavits filed by petitioners though stated to be in Form no.25, did not comply with requirement of Section 83(1)(c) proviso read with Rule 94-A of Rules and Form no.25. It is stated that full particulars of material facts as mandated under Section 100 (1) (b) or Section 100 (1) (d) (ii) were not complied and therefore, petitioners had failed to establish accrual of complete cause of action. On said ground, respondent sought for rejection of election petition.

53. Said contentions are sought to be reinforced with observations of Hon'ble Supreme Court in Samant N Balakrishna's case (supra), V Narayanaswamy's case (supra), Anil Vasudev Salgaonkar's case (supra), Kanimozhi Karunanidhi's case (supra), and Azhar Hussain's case (supra).

54. In Samant N. Balakrishna's case (supra), it was observed, under scheme of ROPA, corrupt practices were of two kinds, first - those alleged to be committed by candidate himself or his election agent or any other person with consent of candidate or his election agent, where proof even single such incident would render election void, without any further requirement; And second - those committed by an agent other than election agent, where additional fact that result of election was materially affected due to same was required to be established.

55. It was further held material facts were those that were absolutely necessary to establish accrual of complete cause of action and omission to state even a single material fact would render challenge against election bad, such material facts were therefore required to be pleaded with full particulars, to establish commission of corrupt practices of either of two kinds.

56. Insofar as meaning of full particulars of material facts, it was observed, particulars of name of person committing corrupt practice, with date, time and place will have to be mentioned, which would give a complete picture of

accrual of cause of action and mere recital of provisions of enactments would not suffice.

57. In V. Narayanaswamy's case (*supra*), it is held, in an election petition on allegation of corrupt practice, cause of action cannot be equated with cause of action as is normally understood because of consequences that follow. Allegation of corrupt practices, if proved, not only does candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Therefore, while noting difference between material facts and material particulars, it was observed failure to plead material facts would be fatal to election petition, absence of material particulars can be cured at a later stage by an appropriate amendment.

58. It was observed that charge of corrupt practice being quasi-criminal in nature, Court must insist on strict compliance and that it was equally essential that particulars of charge of allegations are clearly and precisely stated in petition as required by Section 83, but also supported by affidavit, wherein petitioner was obliged to disclose his source of

information in respect of commission of corrupt practice. It was observed, he must state which of allegations were true to his knowledge and which he believed to be true based on information received by him. It was further held that if relevant paragraphs of petition, wherein material facts are stated were not verified as required and allegation of corrupt practice was open for two equally possible meanings, then election petition would not survive. Under such circumstances, by applying doctrine of substantial compliance, it would not be possible to allow such defects to be cured later on and petition had to fail.

59. In Anil Vasudev Salgaonkar's case (supra), it was held failure to assert, whether digging of bore-wells (alleged to be corrupt practice) was with consent of returned candidate, had not been specifically pleaded. Same was considered as failure to disclose full particulars of material facts which would be fatal to election petition.

60. In Kanimozhi's case (supra), observations made were with reference to election affidavit required to be filed by candidate in Form no.26, in context of requirement of maintaining purity of election, highlighting importance of such



affidavit. In said matter, challenge to election was on ground of non-compliance with mandatory requirements of Section 33A of ROPA regarding affidavit in Form no.26.

61. In Azhar Hussain's case, it was held though Section 83 does not find a place in Section 86 of ROPA, it does not mean that powers under the CPC cannot be exercised. Referring to decision in case of Hardwari Lal v. Kanwal Singh reported in (1972) 1 SCC 214, it was held that there would be no escape from conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of powers under CPC and appropriate orders can be passed, if mandatory requirements enjoined by Section 83 of ROPA regarding statement of material facts in election petition are not complied with.

62. Insofar as requirement of disclosure of source of information, it was held, where neither verification in petition nor affidavit petitioner gives any indication of sources of information as to facts stated in petition which are not to his knowledge and petitioner persists that verification is correct and affidavit in form prescribed does not suffer from any defect

allegations of corrupt practices cannot be inquired and tried at all. In such a case, petition has to be rejected on threshold for non-compliance with mandatory provisions of law as to pleadings. It is no part of duty of Court suo motu even to direct furnishing of better particulars when objection is raised by other side. Where petition does not disclose any cause of action, it has to be rejected. Court, however, cannot dissect pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of petition.

63. Where several paragraphs of election petition alleging corrupt practices remain unaffirmed under verification clause as well as affidavit, unsworn allegation could have no legal existence and Court could not take cognizance thereof. Defect of type provided in Section 83 of Act on other hand can be dealt with under doctrine of curability, on principles contained in CPC. Non-compliance with provisions of Section 83 may lead to dismissal of petition if matter falls within scope of Order 6 Rule 16 and Order 7 Rule 11 of CPC.

64. On other hand, main ground for opposing application is that requirement of filing of affidavit as stipulated in Section 83 (1) (c) of ROPA is not mandatory, if there is substantial compliance and that it would be a curable defect, by relying upon decision in Thangjam Arunkumar's case (supra). Said decision referred to Prajwal Revanna's case (supra). It was therefore contended that at stage of consideration of application for rejection of petition under Order VII Rule 11 of CPC, it was not necessary to examine compliance with filing of affidavit in Form no.25.

65. Insofar as disclosure of material facts with full particulars, it is contended that same cannot be read as requiring statement of all facts, but, statement of necessary particulars as would enable returned candidate to understand accrual of complete cause of action with regard to corrupt practice alleged. It was submitted, corrupt practice alleged against returned candidate in instant case is 'bribery' falling under Section 100 (1) (b) and (d) (ii) of ROPA, by distribution of gift cards to induce voters to vote for returned candidate. It was contended that necessary particulars of meeting i.e., date, time and place, presence of returned candidate and about his

instruction for distribution/consent for distribution of gift cards to all voters of constituency were clearly pleaded.

66. It is further submitted, in paragraphs no.16 (a) to (e), details of date, time and place and person/s who distributed gift cards to each of petitioners, with consent of returned candidate as inducement to vote for him in election scheduled on 10.05.2023 were also pleaded. In fact there is also assertion about registration of FIR against returned candidate and others for offences punishable under Section 123(1) (A) and (B), 127-A of ROPA. It was contended that these particulars would be sufficient to meet requirements of Section 83.

67. In Bhim Rao Baswanth Rao Patil's case (supra), Hon'ble Supreme Court held High Court fell in error in taking note of contentions of parties as well as pleadings, while considering application under Order VII Rule 11 of CPC, as overall statement of facts available on record did not lead to a compelling reason for rejecting election petition. Accordingly, appellant's application was dismissed, and contentions were kept open to be agitated during trial.

68. A three judges Bench of Hon'ble Supreme Court in Madiraju Venkata Ramana Raju's case (supra); two judges benches in Ajay Arjun Singh's case (supra) and Ashraf Kokkur's cases (supra), after reference to earlier decisions in Azhar Hussain's case (supra), V.S.Achutanandan's cases (supra), Hari Shanker Jain v. Sonia Gandhi, reported in (2001) 8 SCC 233, Samant N. Balkrishna v. George Fernandez, reported in (1969) 3 SCC 238, Syed Dastagir v. T.R. Gopalakrishna Setty, reported in (1999) 6 SCC 337, and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, reported in (2006) 3 SCC 100, Ponnala Lakshmaiah's case (supra), Ram Sukh's case (supra), Virendra Nath Gautham's case (supra), D.Ramachandran's case (supra), held that entire petition has to be read as whole to identify whether it discloses cause of action and if there is substantial compliance, petition cannot be rejected under Order VII rule 11 of CPC.

69. In V.S. Achutanandan's case (supra) three judges Bench of Hon'ble Supreme Court explained distinction between material fact and particulars. It held, material particulars can be added by way of amendment later on, and Courts would not

be justified in dismissing petition at threshold stage on ground of failure to disclose material pleadings.

70. Another three judges Bench of Hon'ble Supreme Court in Subash Desai's case (*supra*) clarified purpose behind Section 83 of ROPA, that it was not only procedural but had an object behind it, namely, that a person need not be called upon to answer an allegation of corrupt practice, precise details of which are not set out properly. It was observed that it would be prejudicial to be called upon to defend vague and reckless charges, which are made without taking responsibility of verifying correctness of. It was observed, before Court proceeds to investigate such allegations, it must be satisfied that material facts with full particulars of corrupt practice are stated and which have been duly supported by affidavit. And assertion that '*contents of paragraphs ... and ... were true to his knowledge*' would be sufficient.

71. Admittedly, corrupt practice alleged to have been committed by returned candidate in instant case is bribery by offering gift card as gratification for inducing electors to vote for returned candidate. As per decision of Hon'ble Supreme

Court in case of Surinder Singh v. Hardial Singh, reported in (1985) 1 SCC 91, *standard of proof* applicable in election petitions would be proof beyond reasonable doubt.

72. As noted above, three judges Bench of Hon'ble Supreme Court in V. Narayanaswamy's case (supra) has held, *cause of action* in an election petition on allegation of corrupt practice, cannot be equated with cause of action as is normally understood, due to consequences that follow. It is held, in case of defective material facts, petition has to be rejected at outset, but in case of failure to plead all material particulars, defect was curable. It is further clarified, where inspite of opportunity to cure defects in providing mat

73. It is seen that petitioners herein have opposed application for rejection of petition, by contending that averments in election petition disclose accrual of complete cause of action with sufficient material particulars and it does not suffer from defect. Even from their contention that they are not obliged to disclose material facts with all particulars, but only those, as would be sufficient to indicate accrual of complete cause of action, same stand can be deduced.

74. Even insofar as contention about failure to disclose 'source of information' as a material omission, petitioners contend that verifying affidavit clearly states that petition averments were within personal knowledge. Only, as regards requirement of filing affidavit in prescribed form, they claim liberty to cure defect.

75. Before examining whether there is failure to plead all material facts, it would be appropriate to refer to observations of Hon'ble Supreme Court in Samant N. Balakrishna's case (supra), that under scheme of ROPA, 'corrupt practices' are of two kinds, first - those alleged to be committed by candidate himself or his election agent or any other person with consent of candidate or his election agent and where proof even single such incident would render election void, without any further requirement.

76. While, second kind were those committed by an agent other than election agent, where additional fact that result of election was materially affected due to such corrupt practice would be required to be established. It is not in dispute



that allegation against returned candidate in instant case is commission of 'corrupt practice' of first kind.

77. Perusal of election petition would indicate that petition is filed by five electors of Ramanagara Assembly Constituency no.183. In paragraphs no.3 and 4, there are averments about notification issued by Election Commission on 29.03.2023 for holding General Elections to 16<sup>th</sup> Legislative Assembly of Karnataka, with details of calendar of events. In paragraphs no.7 to 11, details of petitioners' names in electoral rolls are stated. It is also stated that returned candidate herein had contested election on ticket sponsored by Indian National Congress. Thereafter, it is stated that in election results declared on 13.05.2023, respondent herein was returned candidate issued with Form no.21E.

78. As contended, material facts regarding commission of corrupt practice by returned candidate are stated in paragraph no.14. It is stated that on 6<sup>th</sup> May, 7<sup>th</sup> May, and 9<sup>th</sup> May of 2023, returned candidate had convened meeting in Block Congress Office, Ramanagara, wherein it was decided by returned candidate to "print and distribute" "*gift cards*" to all

voters of Assembly Constituency no.183. It is specifically averred that returned candidate was personally present and directed all Block Congress Members, supporters and office bearers to ensure that gift cards reach every single voter. And in pursuance of said direction, *gift cards* were distributed to voters including petitioners.

79. Thereafter, particulars of person who handed over gift cards to each of petitioners with time and place of handing over of gift card are stated. It is stated that Mr.Raju S/o Bolegowda handed over gift card to petitioner no.1 at his residence on 10.05.2023 at 2:30 a.m. Likewise, one Mr.Siddesh S/o Kariyappa handed over a gift card to petitioner no.2 at his residence on 12.05.2023 at 12:30 a.m. It is also stated that Mr.Ankappa S/o Ankappa handed over gift card to petitioner no.3 in his residence at 5:15 a.m. on 10.05.2023. It is also stated that Mr.Cable Ravi S/o Narayanappa, handed over gift card to petitioner no.4 in his residence at 11:45 p.m. on 09.05.2023. It is also stated that Mr.Shivashankar S/o Kenchappa, handed over gift card to petitioner no.5 in his residence at 5:30 a.m. on 10.05.2023.

80. Careful perusal of above averments would indicate that petitioners have indeed pleaded about 'printing and distribution of gift cards' with consent of returned candidate. But, without specific assertion, how said gift card could be considered as '*gratification or reward*', when copy of *gift card* produced, does not bear indication of any value attached to it. They have also not asserted that person while handing over gift card had disclosed to them about such value and mode of encashment of such value to constitute inducement or gratification.

81. While averments regarding handing over of 'gift card' to each of petitioner is stated individually, there is general assertion in paragraph no.17, that they were informed *gift card* would be activated, if they voted for returned candidate. There is further general assertion that after voting, petitioners could go to any shopping centre in Ramanagara District and purchase items worth Rs.5000/-, and therefore *gift card* made them to vote for returned candidate. It is also stated when immediately after voting, petitioner no.1 went to FRESHLAND HYPERMARKET, Ramanagara on 10.05.2023 itself, he was

informed that *gift card* is not acceptable, when he realized about false inducement to vote for returned candidate.

82. Likewise, petitioner no.2 went to BENAKA SUPER BAZAAR, Ramanagara on 11.05.2023, he was informed that *gift card* is not acceptable, when he realized about false inducement to vote for returned candidate. Even petitioner no.3 went to MORE SUPERMARKET, Ramanagara on 10.05.2023, he was informed that *gift card* is not acceptable, when he realized about false inducement to vote for returned candidate. Likewise, petitioner no.4 went to BIGMART SUPERBAZAR, Ramanagara on 11.05.2023, he was informed that *gift card* is not acceptable, when he realized about false inducement to vote for returned candidate. So also, petitioner no.5 went to VISHAL MEGA MART, Ramanagara on 11.05.2023, he was informed that *gift card* is not acceptable, when he realized about false inducement to vote for returned candidate.

83. It is thereafter stated that instances of corrupt practice committed by respondent and his followers, with consent of returned candidate was admitted by him in press conference explained in detail in paragraph no.23.

84. Such general assertion is without disclosing particulars of who, when and where, informed each of petitioners that *gift card* was associated with monetary or other value which could be considered as *gratification or inducement*. Thus, chain of events for establishing commission of corrupt practice falling under Section 123 (1) (A) (b) of ROPA i.e. offer of inducement to an elector to vote or refrain from voting at an election as a reward, cannot be complete.

85. Keeping in mind that petitioners have alleged inducement or gratification to be pecuniary in nature, it is seen that, there are also no specific assertions that shopping centers in Ramanagara District agreed to be conduits of returned candidate in commission of corrupt practice, which would also be material particular to complete chain of events to establish commission of corrupt practice by returned candidate. Unless petitioners specifically disclosed name of person who had offered inducement to them, with particulars regarding place, time and date, even claim of admission by returned candidate in subsequent press conference held on 22.05.2023 about distribution of *gift cards* would not complete chain of events for

commission of corrupt practice falling under Section 123 (1) (A) (b) (ii) of ROPA i.e. offer of inducement to an elector for having voted or refrained from voting.

86. Later assertion that immediately after voting, they went to shopping center etc. to encash promise of gratification or inducement as informed to them, and found it to be false promise, and further statements that corrupt practice was committed with consent of returned candidate was admitted by him in press conference held on 22.05.2023 at 4:30 p.m. at Congress Office, Ijoor, Ramanagara, in respect of which petitioners have incorporated transcript and translation of entire statements made by returned candidate, would be immaterial. Interestingly, in paragraph no.16(b), petitioner no.2 states that he was given *gift card* at 12:30 a.m. on 12.05.2023 but in paragraph no.19, he claims to have sought to encash it at BENAKA SUPER BAZAAR on 11.05.2023 itself which would be material discrepancy.

87. As per settled law, complete cause of action would mean entire chain of events that would connect allegation of bribery and inducement committed by returned candidate, his

election agent or any other person with his consent. It is held in C.P. John v. Babu M. Palissery, reported in (2014) 10 SCC 547, it is held omission to plead even a single material fact would be fatal.

88. In Anil Vasudev Salgaonkar's case (supra), in context of a charge of corrupt practice, it was held "material facts" would mean all basic facts constituting ingredients of particular corrupt practice alleged, which petitioner is bound to substantiate before he can succeed on that charge and if "material facts" were missing even after expiry of period of limitation for filing election petition, pleading becomes deficient. In such context, failure to assert, whether digging of bore-wells (alleged to be corrupt practice) was with consent of returned candidate, which had not been specifically pleaded, was considered as failure to disclose full particulars of material facts and held fatal to election petition.

89. Thus from above, analysis, there is failure to plead how offer of *gift card* acted as inducement or gratification upon petitioners would be a fatal defect. Point (i) is therefore answered in affirmative.

90. Insofar as point (ii), proviso to Section 83 (1) (c) requires election petitioner to file affidavit in support of allegations of corrupt practice in addition to verification of pleadings as required by provisions of CPC. Rule 94A of Rules prescribes form in which affidavit is required to be filed as per above proviso.

91. Same is no more *res integra* in view of recent decision of Hon'ble Supreme Court in case of Prajwal Revanna's case (supra) referring to Ponnala Lakshmaiah's case (supra), three judges Bench decision in G.M. Siddeshwar's case (supra) and Constitution Bench decision in case of Murarka Radhey Shyam Ram Kumar v/s RoopSingh Rathore, reported in AIR 1964 SC 1545, has held said requirement to be not mandatory and curable. Therefore, point (ii) is answered in negative. Hence, following:

ORDER

I.A.no.2/2023 filed by returned candidate under Order VII Rule 11 of CPC is allowed.

Consequently, Election Petition is dismissed.

Sd/-  
JUDGE



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By order

(B C PATRA)  
SECRETARY  
ELECTION COMMISSION OF INDIA

(MADHU A C)  
ASSISTANT CHIEF ELECTORAL OFFICER  
& EX-OFFICIO UNDER SECRETARY TO GOVERNMENT